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Supreme Court, U.S.
FILED

No. 03 - 03 46

JUL 30 2003

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IN THE

Supreme Court of The United States

GLOBAL RELIEF FOUNDATION, INC.,

Petitioner,

v.

JOHN W. SNOW, *et al.*,

Respondents,

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether OFAC violated due process by designating GRF an SDGT based upon secret evidence and without affording GRF an opportunity to see OFAC's evidence, elicit sworn testimony, to confront and cross-examine OFAC's witnesses and to conduct oral argument in front of a neutral magistrate.

2. Whether foreign persons have an interest in GRF's property, such that OFAC was authorized to block GRF's property under IEEPA, simply because GRF provides humanitarian aid to foreign persons on foreign soil.

3. Whether the Executive Branch's use of IEEPA, to sanction a U.S. person for conduct which was legal when taken violates the Ex Post Facto and Bill of Attainder Clauses, and Fifth and Sixth Amendments.

PARTIES TO THE PROCEEDINGS

Petitioner, Global Relief Foundation, Inc., was the plaintiff in the District Court for the Northern District of Illinois and appellantin the Seventh Circuit.

Petitioner seeks to have this Court review the judgments entered below in favor of the following Respondents: Paul H. O'Neill in his official capacity as Secretary of Treasury and his successor, John W. Snow, Collin L. Powell in his official capacity as Secretary of State, John Ashcroft in his official capacity as Attorney General, R. Richard Newcomb in his official capacity as Director of the Office of Foreign Assets Control U.S. Department of Treasury, and Robert S. Mueller, III in his official capacity as Director of the Federal Bureau of Investigations. Respondents were appellees and defendants below. Respondents shall be referred to as "defendants" herein.

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PETITION FOR A WRIT OF CERTIORARI

GLOBAL RELIEF FOUNDATION, INC., (hereinafter "GRF") Petitioners, by undersigned counsel, under appropriate rules of this Court, request that this Court issue a writ of certiorari to review the decision of the United States Court of Appeals for the Seventh Circuit (hereinafter the "Seventh Circuit").

OPINIONS BELOW

The Seventh Circuit's opinion affirming the district court's denial of GRF's motion for preliminary injunction is reported at Global Relief Foundation, Inc. v. O'Neill, 315 F.3d 748 (7th Cir. 2002)(App. A). The district court's opinion denying plaintiff's motion for preliminary injunction is reported at Global Relief Foundation, Inc. v. O'Neill, 207 F.Supp.2d 779 (N.D.Ill. 2002)(App. C). The district court's opinion denying GRF's emergency motion to preclude ex parte, in camera proceedings is reported at Global Relief Foundation, Inc. v. O'Neill, 205 F.Supp.2d 885 (N.D.Ill. 2002)(App. F).

JURISDICTION

The Seventh Circuit issued its opinion on December 31, 2003. App. A. It entered its order with respect to rehearing and rehearing en banc on April 4, 2003. App. H. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

Reprinted in an appendix to this petition (App. I-M) are pertinent provisions of the United States Constitution, art. I. § 9, cl. 3, amends. V & VI; 18 U.S.C. § 2339B; the International Emergency Economic Powers Act, (hereinafter "IEEPA") 50 U.S.C. §§ 1701, 1702, and 1705; Executive Order 13224, 66 Fed.Reg. 49079; and 31 C.F.R. §§ 501.807, 515.701-05.

STATEMENT OF THE CASE

A. The History Of GRF.

GRF was incorporated in the State of Illinois on January 10, 1992, and established itself as a tax-exempt, non-profit organization pursuant to § 501(c)(3) of the U.S. Internal Revenue Code. Since its formation, GRF has maintained its principal office in Bridgeview, Illinois. GRF's mission has been to provide charitable relief throughout

the world. To serve this purpose, GRF has primarily received funds from Muslims in the United States and Europe.

With these charitable donations, GRF provided humanitarian aid in approximately 20 different nations and/or locales, focusing mostly on places with large Muslim populations. Its largest expenditures were for its food and Ramadan programs, with its other major programs focusing on providing health care and education to those in need as well as emergency relief in response to major catastrophes. In order to ensure that its humanitarian aid went to those in need, GRF physically supervised the distribution of its relief by maintaining field offices and dispatching field workers around the world. As of December 13, 2001, GRF was the second largest United States-based Islamic charitable organization (receiving $5,270,673 in contributions for 2001), and the largest such organization with respect to the geographic scope of its relief programs.

B. U.S. War On Terrorism.

In the wake of the September 11, 2001 terrorist attacks, many Islamic charities came under intense federal scrutiny because the government believed that they were funneling money to terrorists organizaitons such as al Qaeda and Hamas. To stop the flow of money, President Bush signed Executive Order 13224, 66 Fed.Reg. 49079, App. L, on September 23, 2001, declaring a national emergency with respect to international terrorism and invoking the powers delegated to him under IEEPA App., K. In the annex to that Order, the President announced a list of individuals and organizations he had determined were engaging in or supporting terrorism, and froze the assets of those persons. Among the 27 organizations targeted by the Executive Order were "three charitable or humanitarian organizations that operate as fronts for terrorist financing and support. . . ." GRF was not blocked pursuant to the September 23, 2001 Executive Order. In Executive Order 13224, President Bush also authorized the Secretary of State and the Secretary of Treasury to designate additional organizations and individuals for blocking if certain conditions were met. App. L § 1(c).

C. Enactment of U.S.A. PATRIOT ACT.

On or about October 26, 2001, the United States Congress passed Public Law 107-56 which was titled the "USA PATRIOT ACT". Among other things, the USA PATRIOT ACT amended 50 U.S.C. § 1702(a)(1)(B) to allow the President to "block [property] during the

pendency of an investigation". App. 2K. It also amended IEEPA to allow the Executive branch to use classified evidence to support blocking decisions. Id. 4K.

D. OFAC'S Administrative Decisions.

On December 14, 2001, the Department of Treasury's Office of Foreign Asset Control ("OFAC") implemented one of the newly enacted powers under the USA PATRIOT ACT by blocking GRF "pending investigation".[1] In support of this decision, OFAC prepared an internal memorandum explaining that there was a "reasonable belief that [GRF] will be found to meet one or more of the criteria of Executive Order 13224." OFAC kept the entire "record" pertaining to GRF secret.[2]

In furtherance of its investigation, government agents also raided GRF's offices in suburban Chicago. They seized most of the business records (approximately 500,000 documents) from GRF's headquarters, including GRF's promotional books, tapes, email, literature, religious texts, videos, video equipment machines, computers and the like. Though a search had been in the works since at least December 7, no warrant was provided to GRF. Judge Andersen revealed in his opinion below that the government conducted a warrantless search, invoking "emergency" procedures in an effort to legalize their acts after the fact. App., 18C-23C.

OFAC issued a "Blocking Notice" to GRF on the day of the raid, advising GRF that its entire operations, including all of its money and records, were blocked pending an investigation into the government's suspicions. In the Blocking Notice, OFAC advised GRF that if it believed the blocking action to be erroneous, it could "challenge it, [by sending a] letter setting forth GRF['s] views" to the Director of OFAC. However, neither the legal justification nor the factual basis for the "Blocking" were provided to GRF in the Blocking Notice, leaving GRF in the dark as to how to formulate its defenses. Although, GRF made

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[1] At the time that OFAC blocked GRF pending investigation, President Bush had not delegated that power to the Treasury Department or any other person or entity by referencing it in an Executive Order. App. L. In fact, President Bush could not have delegated that power in E.O. 13224 because E.O. 13224 was implemented before Congress promulgated The USA PATRIOT ACT.

[2] The only notice of the charges received by GRF were vague accusations made by the Government to the media that GRF had some unspecified connections to al Qaeda and/or Hamas.

efforts to obtain notice of the charges from OFAC, GRF's efforts were unavailing.

GRF's defense was also impeded by the fact that it did not have access to its own documents which contained evidence of its innocence. Indeed, for weeks after December 14, defendants refused to acknowledge which agency had possession of GRF's documents. Finally, on January 4, 2002, a Treasury spokesman told GRF that it could not see its own documents unless GRF asked for, and Treasury granted, a license. After GRF applied for this license on January 4, Treasury backtracked by telling GRF that it would have to ask for the return of its documents from the FBI. Both the FBI and Treasury continued to refuse GRF access to its own documents.

Kept in the dark about OFAC's charges and deprived of the most likely source for exculpating evidence, GRF had little choice but to bring this action against the government. However, before it could pay its attorneys to do the work, GRF needed to obtain a license from OFAC. The undersigned obtained a license to accept payment from GRF for its legal fees on January 7, 2002. On January 28, 2002, GRF filed the complaint, sub judice, followed soon thereafter by a motion for preliminary injunction (February 12, 2002), seeking to enjoin the government from blocking GRF's money, documents and right to provide humanitarian relief.[3]

On March 8, 2002, defendants notified the trial court of their intention to hold an ex parte hearing and submit secret evidence (for the court's in camera review) in opposition to GRF's motion for preliminary injunction. GRF promptly objected to any and all ex parte or in camera proceedings for any purpose, and moved to enjoin OFAC from going forward with their proposed ex parte, in camera proceedings. Despite the opposition, Judge Andersen met with the government officials

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[3]After seven months of combing through GRF's records, defendants (as explained supra at ii, respondents are referred to collectively herein as "defendants") have found no evidence of any wrongdoing by GRF. Of 450,000 items defendants claim are "pertinent", i.e., the materials the government asked for in OFAC's "Blocking Notice", none has ever been mentioned or relied on by OFAC or even included in the administrative record for consideration. To date, OFAC has continued to prohibit GRF from engaging in any humanitarian project, and it continues to bar United States persons from donating to GRF for such relief efforts.

regarding their secret evidence. This meeting was not recorded or transcribed in any way.

On March 27, 2002, OFAC declassified portions of four volumes of material, which they placed in the public record along with a "Statement of Material Facts" advanced as part of the evidence justifying their actions against GRF. The resulting factual record contained mostly unsworn comments, newspaper articles and innuendo comprised entirely of hearsay presented in a rambling format insulated from cross-examination. The Government's findings and so-called record were heavily redacted, leaving GRF uninformed of the full scope of the government's accusations. Much of the government's "record" was generated after December 14, 2002.

Although the administrative record produced to GRF was incomplete, the government did explain its rationale for blocking GRF. OFAC's director, Richard Newcomb asserted that OFAC could not allow GRF to continue as a functioning organization because, if GRF were allowed to operate, Treasury could not "monitor" its activities.

> [B]lockings are designed to swiftly immobilize funds and other types of assets that OFAC has a reasonable basis to believe **could be used** to finance activity posing a threat to U.S. interests. . . . If OFAC were compelled to unblock [GRF's] assets without placing strict conditions on the unblocking, such as those contained in OFAC License No. SDGT-45 (Exhibit 11) relating to certain GRF activities, it would lose the ability to monitor them and prevent their **possible use** in the orchestration, assistance or support of global terrorist plots.

3-25-02 Newcomb Aff. (emphasis supplied).

On April 5, 2002, the district court issued a memorandum opinion and order, accepting the defendants' "allegations" that "extraordinary circumstances" warranted reliance on a secret record, and refusing to halt the judicial use of secret evidence or ex parte contacts.

App.F.[4] GRF noted its appeal to this ruling on April 10, 2002, and filed a petition for a writ of mandamus on the same date. On April 11, 2002, the Seventh Circuit denied GRF's petition for a writ of mandamus and dismissed its appeal as premature. App. D & E.

Although Judge Andersen did not compel disclosure of the secret evidence, he criticized the government for failing to give GRF access to its own documents. In fact, he said that it was "difficult, if not impossible, for [GRF] to respond . . . without [its own] documents", as well as procedurally unfair.[5] Tr. Hr'g (April 30, 2002)(J. Andersen). "I believe that [GRF] should have . . . whatever [it] feels necessary [in the form of its own documents] to respond to the motion [for summary judgment] and should not be operating under constraints." Tr. Hr'g (May 7, 2002)(J. Andersen). Although defendants claimed that national security implications authorized them to withhold GRF's documents from GRF, the government began copying some of GRF's records and returned them slowly to GRF starting in April, 2002. However, the documents were returned in a state of disarray which impeded GRF's ability to use them.

On May 29, 2002, defendants proposed to convert their temporary blocking "pending investigation" into a permanent designation of GRF as a "Specially Designated Global Terrorist" (an

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[4]Judge Anderson's acceptance of the government's claims of national security stands in marked contrast to the rejection of these exact same claims in Detroit Free Press v. Ashcroft, 195 F.Supp.2d 937 (E.D.Mich.), reconsideration denied (2002) (Edmonds, J.) (considering and rejecting each of defendants' national security justifications for secret proceedings as baseless in connection with INS detention of the chairman of GRF's board of directors).

[5]In another case by an Islamic charity challenging an OFAC designation, Benevolence Intern. Foundation, Inc. v. Ashcroft, 200 F. Supp. 2d 935 (N.D. Ill. 2002), the Judge, upon learning that the government had not returned copies of documents seized from that charity on December 14, 2001, ordered the government to make them available to the charity:

> Why not? How can they possibly try to sue without any documents? . . . [Y]ou have their documents. If they need those documents to pursue their case, they do not have those. [H]ow are they supposed to rebut the government's case if they do not have the secret documents [either]? I mean, you know, they are being whipsawed on both ends of the spectrum.

"SDGT"). In support of this proposed measure, OFAC identified one new newspaper article. In opposition, GRF supplemented its preliminary injunction motion by asking Judge Andersen to enjoin the new SDGT designation proceedings. Over the ensuing five and one half months, defendants added a few additional hearsay materials and an unknown quantity of classified materials into the administrative record. During the same time frame, GRF requested the right to elicit sworn testimony, serve subpoenas, conduct cross-examination and to see the full record, and for access to an unbiased fact finder. Defendants denied GRF all of these rights.

Although Judge Andersen had previously called this "an extremely important case," with "substantial" worldwide interest, and acknowledged that GRF had raised "at least 18 constitutional questions," which were "significant" issues, Tr. Hr'g (April 30, 2002)(J. Andersen), he nevertheless denied GRF's motion for preliminary injunction. App. F. Thus, the district court accepted the claim that "extraordinary circumstances" warranted reliance on a secret record. GRF noted its appeal from this decision on June 11, 2002.

Eleven (11) days before the oral argument in front of the Seventh Circuit (October 18, 2002), OFAC formally designated GRF an SDGT. App. G. Defendants notified the Seventh Circuit of this action immediately, suggesting that OFAC's SDGT designation mooted the appeal, which according to the government, only sought to enjoin the blocking pending investigation and not the SDGT proceedings.

E. Seventh Circuit's Opinion.

On December 31, 2002, the Seventh Circuit (Judges Easterbrook, Coffey and Cudahy) issued their opinion, holding that GRF had preserved its challenge to the SDGT designation for the interlocutory appeal, but that the SDGT designation should not be enjoined. App. A. The Seventh Circuit remanded the case to Judge Andersen so he could review the propriety of the SDGT designation. App. 12A.

When issuing its opinion, the Court below made several confusing and inconsistent statements. For example, Judge Cudahy implied that GRF was not foreclosed from seeking a permanent injunction against OFAC's use of secret evidence.

> GRF's constitutional objections are of varying degrees of merit, but its procedural complaints seem of greatest weight, even though not weighty enough to support preliminary relief. These procedural objections may not have been fully formulated in the context of GRF's designation as an SDGT.

App.12A-13A (concurring opinion). On the other hand, the majority opinion implied that further challenge to OFAC's use of secret evidence was foreclosed. See Id. 12A ("Because we have dealt exclusively with legal contentions, our resolution of them is conclusive and not subject to reexamination in the district court when deciding whether GRF is entitled to a permanent injunction"). But see id. (Judge Cudahy noting that the Court's opinion only foreclosed further preliminary relief and even that conclusion may not be correct). The apparent tension between the statements made by Judges Cudahy and Easterbrook in the published opinion presents a tremendous potential for confusion below upon remand and in other cases relying upon the precedential value of the Seventh Circuit's opinion.

REASONS FOR GRANTING THE WRIT

A. This Case Concerns An Important Federal Questions

This case presents to the Court several issues of exceptional importance worthy of review under a writ of certiorari. First the Court is confronted with OFAC's decision to shatter the very foundation of our adversarial system of justice by denying an American corporation indispensable protection from tyranny guaranteed by the Due Process clause. Specifically, OFAC's use of secret evidence to snuff GRF out of existence is anathema to our adversary system, which is built upon the principle that "truth [can only] emerge from the confrontation of opposing versions and conflicting data"; In re Gault, 387 U.S. 1, 20-21, (1967). By ratifying OFAC's use of secret evidence and unleashing a secret police and tribunal on its own citizens, the Seventh Circuit has abandoned the core principle of our judicial system. Since the Seventh Circuit's decision dispenses with the very instruments of due process needed to maintain fairness and to ensure adequate and accurate findings, certiorari review is necessary to halt our plunge into a "Brave New World" where the recognized safeguard against governmental persecution, i.e. the fundamental right to a public trial, is simply a footnote in the history books. Clearly, the underlying proceedings so far

deviated from the accepted and usual course that the Court should exercise certiorari review in order to correct the problem.

Second, Certiorari review is appropriate here because the public is solicitously awaiting the final resolution of this case. In fact, leading journalists around our country have written, published or aired over a thousand stories about this "high profile" case, reporting that it concerns "the most basic constitutional issue: the right not to have your freedom constrained without being able to see the evidence that justifies it." Dale Dale Russakoff, N.J. Secrecy Rule Keeps Arab American in Jail and in the Dark, Wash. Post at A01. One bellwether publication warns:

> Maybe Global Relief does aid terrorists. Maybe it doesn't as the organization's lawyers insist. But by letting the government keep secret its evidence, the judges have rendered worthless the group's constitutional due process rights, including the right to contest these allegations. "If there is . . . evidence," the charity's lawyer said, "it's evidence I've never seen."
>
> . . .
>
> Few doubt that the leaders of some charities operating in the U.S. are funneling money to homicidal zealots abroad while staff members ladle soup to hungry Muslim families. But when the administration and the courts imperiously ignore the Constitution to protect against this possibility, they lay the legal groundwork for a nation in which, far-fetched as it sounds now, federal agents could shut down the United Way and, when the public ask[s] why, respond: "None of your business."

Rights and the New Reality, L.A. Times, January 5, 2003 at M4.

Accordingly, to the public at large, this case has the taint of injustice, and certiorari review is necessary to reaffirm the public's faith in our justice system as one which will protect cherished freedoms for all, including the U.S. Muslim community's right to contribute to charitable causes of its choice. Additionally, by approving OFAC's eradication of the Nation's largest Muslim charity without due process, the Seventh Circuit not only deprived Muslims in America of a

significant choice to which they can donate their funds, but instilled a fear in the Muslim community that they are being persecuted for their religious beliefs.

Third, it would be advantageous for the court to review the legality of defendants' secret evidence because this issue has wider applicability than for just this case. See Holy Land Foundation for Relief and Development v. Ashcroft, ___ F.3d ___, 2003 WL 21414301 (D.C. Cir. 2003) (authorizing use of secret evidence to designate an Islamic charity an SDGT under IEEPA); Benevolence International Foundation, Inc. v. Ashcroft, 200 F. Supp. 2d 935 (N.D. Ill. 2002)(staying Islamic charity's civil challenge to SDGT designation due to criminal charge). In fact, since September 11, 2001, numerous courts have published opinions establishing procedural boundaries to the government's war on terrorism. Of these "war on terrorism" cases, this one is particularly consequential because it concerns a catastrophic deprivation of a U.S. person's vital interest. Accordingly, this court should grant certiorari in order to consider how to delineate the outer limits of the government's authority under IEEPA, which is a matter that has not been, but should be, decided by this Court.[6]

Adding to the momentousness of this case is the fact that it concerns a matter vital to the safety and welfare of the people, i.e. the government's war on terrorism. Nevertheless, it is inappropriate for the President to exploit popular sympathies, which might favor imperious displays of power in the aftermath of September 11, in order to expand

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[6]Since Dames & Moore was decided, Congress has expanded the President's power under IEEPA, e.g. by authorizing the use of secret evidence to support an SDGT designation. The constitutionality of these new powers has never before been addressed by this Court even though similar provisions have been applied other statutory schemes. See infra n.13 (discussing secret evidence under AEDPA). Clearly, then GRF's secret evidence issue is in a posture favorable for certiorari review. Compare, this case, Holy Land Foundation for Relief and Development, ___ F.3d ___, 2003 WL 21414301 and Benevolence International Foundation, 200 F. Supp.2d 935 (2002) with e.g. Hamdi v. Rumsfeld, 316 F.3d 450 (4th Cir. 2003) (denial of claim brought by enemy combatant captured in foreign war zone challenging to detention); Center for National Security Studies v. Department of Justice, ___ F.3d ___ 2003 WL 21382899 (D.C. Cir. 2003) (denial of claim brought by public interest group to obtain information regarding persons detained in wake of terrorist attack); Hadad v. Ashcroft, 221 F. Supp. 2d 799 (E.D. Mich 2002) (holding that deportation hearing was open to public). Furthermore, if this Court does not accept certiorari now, it is quite possible that GRF will be unable to reassert these arguments after remand because GRF is on the brink of total insolvency.

the national security privilege and peacetime emergency powers of the President at the expense of our core liberties. "Nothing is more common than for free people, in times of heat and violence, to gratify momentary passions, by letting in to the government principles and precedents which afterwards prove fatal to themselves." United States v. Brown, 381 U.S. 437, 444 (1965) (quoting Alexander Hamilton); David Cole, The New McCarthyism: Repeating History in the War on Terrorism, 38 Harv. L. R. - C.L. L. Rev. 1 at 3 (2003) ("in times of fear, government often looks for ways to engage in prevention without being subject to the rigors of the criminal process", but such "responses are virtually always considered mistakes"). Therefore, it is imperative that the Court grant certiorari in this matter in order to define the scope of the Executive's "national security" privilege while balancing the fundamental rights of U.S. citizens.

B. The Seventh Circuit's Opinion Conflicts with Decisions of Other Circuits as Well as The Supreme Court.

1. The Seventh Circuit's Ruling Defies Due Process.

The Seventh Circuit's ruling that OFAC complied with due process when designating GRF an SDGT is contradicted by case law from other Circuits and the Supreme Court. Under that law, Courts are required to evaluate the adequacy of procedural protections through the "consideration of three distinct factors":

> (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and (3) the government's interest, including the fiscal and administrative burdens that the additional or substitute procedural procedures would entail.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976). However, when the Seventh Circuit ratified OFAC's procedures, it simply determined that OFAC's use of secret evidence without an adversary proceeding was consistent with the preservation of national security and human life without attempting to balance these governmental interests against GRF's rights or the risk of erroneous decision. App.10A-11A.

Although the Seventh Circuit's observation may have been correct–national security may best be preserved through Gestapo tactics–the Seventh Circuit's failure to consider the ramification of these procedures on GRF's rights and the interests of the Muslim community was fatal.[7] In fact, if the Seventh Circuit had balanced all three Matthews factors it could have only come to one conclusion: the death sentence imposed upon GRF by OFAC with secret evidence was a miscarriage of justice.

First, GRF was entitled to extraordinary procedural protections because the SDGT designation had grave consequences for it. Not only did OFAC block all of GRF's accounts and property and stigmatize it throughout the world, but it deprived GRF of all ability to (1) do charitable work; (2) solicit donations; (3) associate with people; and (4) maintain its records. Since OFAC's designation of GRF as the "enemy" extinguished GRF's most precious rights and imperiled countless persons in need of GRF's aid, OFAC was obligated to temper its devastating and ruinous designation by offering GRF the full panoply of due process rights. Goldberg v. Kelly, 397 U.S. 254, 263-271 (1970)(level of due process is highest when deprivation "may deprive [person] of very means by which to live . . ."). However, OFAC violated its constitutional obligations by failing to grant GRF procedural protections commensurate with the level of the deprivation.

To start, OFAC should have given GRF full notice of the facts underlying the government's accusations.

> [W]here governmental action seriously injures an individual, and the reasonableness of the action depends on fact finding, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or

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[7]Since the Seventh Circuit focused only on the government's interests, without even considering GRF's countervailing interests, it is clear that it relied upon the wrong rule of law to support its decision.

> persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. . .

Goldberg, 397 U.S. at 270; Ohio Bell Tele v. Public Utilities Comm'n, Bowman, 301 U.S. 292, 303-04 (1937) ("a hearing is not judicial . . . unless the evidence can be known").

Here, OFAC's notice was not meaningful because it left GRF in the dark about which transactions were being scrutinized by the government, when and where they took place and who was involved. Since GRF participated in numerous transactions with many persons from many countries, it was impossible for GRF to speculate which transaction(s) it needed to defend. Quite simply, OFAC imposed on GRF the impossible and monumental tasks of either guessing the source and nature of the government's secret suspicions or proving the legality of each donation, each charitable expense paid, and each wage paid regardless of whether OFAC challenged a specific transaction.

Furthermore, the government did not ameliorate its due process violation when it declassified portions of the "administrative record" because OFAC continued to rely on secret evidence therein. App. G (whole pages of evidence are missing). With respect to the evidence that was disclosed in the administrative record, it was "unintelligible" with "so many twists and turns that the reader ends up completely discombobulated." Evans v. Chicago, 2001 WL 1654769 *2 (N.D.Ill.) (applying Fed. R. Civ. Proc. 8 to dismiss complaint because the Complaint "offered a story filled with disjointed allegations"). Accordingly, OFAC's administrative record failed to satisfy the principles associated with notice pleading requirements of the Federal Rules of Civil Procedure. Although OFAC was not explicitly obligated to comply with the Rules of Civil Procedure when notifying GRF of its accusations, OFAC nevertheless should have adhered to a close facsimile of those principles when designating GRF since the gravity of its charges warranted extraordinary protections akin to those found in judicial proceedings instead of the inconsequential procedures actually utilized.

Defendants also should have afforded GRF a full opportunity to challenge the government's accusations in a hearing. Oral hearings are indispensable when credibility and veracity are at issue as they are here. Goldberg, 397 U.S. at 269 ("written submissions do not afford the

flexibility of oral presentations" and fail to fully protect a person's interests); Additionally, "[i]n almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." E.g. Goldberg, 347 U.S. at 269; ICC v. Louisiana, & N.R. Co., 227 U.S. 88, 93-94 (1913); This includes the right to confront and cross-examine confidential informants "[w]here disclosure of an informant's identity, or of the contents of his communication is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause". Roviaro v. United States, 353 U.S. 53, 60-61 (1957); cf. Jencks v. United States, 353 U.S. 657 (government must reveal exculpatory evidence).

Defendants breached their constitutional obligations here by failing to provide GRF any opportunity to challenge OFAC's evidence in a hearing. Indeed, under OFAC's regulations it had no obligation to even provide GRF with a hearing.[8]

> [a] blocked person seeking unblocking . . . may request a meeting with OFAC; however, such meetings are not required, and the office may, at its discretion, decline to conduct such meetings prior to completing a review pursuant to this section.

31 C.F.R. § 501.807(c) (App. M)(emphasis added). Furthermore, OFAC improperly denied GRF any right to confront or cross-examine OFAC's witnesses (including informants) or see OFAC's evidence.[9]

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[8]When defending this suit, defendants argued that they had no obligation to hold a hearing or make their witnesses available for confrontation and cross-examination because their regulations did not mandate such procedures. Commentators have criticized the use of these insubstantial procedural protections to sanction U.S. persons. Cole, supra n.9 at 1, 26, 27 ("IEEPA affords those designated . . . no opportunity to contest the designation" and "[I]t allows the President to selectively blacklist disfavored political groups without substantive standards or procedural safeguards).

[9]OFAC also should have given GRF an opportunity to challenge the SDGT designation in a jury trial. In essence, OFAC's designation of GRF as an SDGT was equivalent to labeling GRF the "enemy". Regan v. Wald, 468 U.S. 222, 225-228 (1984) (explaining that IEEPA is nothing more than a subset of the powers previously exercised by the President under the Trading With the Enemy Act ("TWEA")); Dames & Moore, 453 U.S. at 672-73. Since challenges to seizures on land of "enemy" property were tried to a jury at common law, Miller v. United States, 78 U.S. 268, 304 (1870), GRF had a right to a jury trial to challenge OFAC's designation of GRF as the enemy. U.S.

Accordingly, since OFAC's designation of GRF as an SDGT without a proper hearing, did not comply with due process, OFAC's SDGT designation, and the administrative record underlying it, was presumptively deficient.

Second, this presumption is reinforced by the fact that OFAC's secret evidence and obfuscatory proceedings produced a substantial likelihood of an erroneous determination.[10]

> The traditional Anglo-American distrust for secret trials has been variously ascribed to the notorious use of this practice by the Spanish Inquisition, to the excesses of the English court of Star Chamber, and the French monarchy's lettre de Cachet. All of these institutions obviously symbolized a menace to liberty. In the hands of despotic groups each of them had become an instrument for the suppression of political and religious heresies in ruthless disregard of the right of an accused to a fair trial.

In re Oliver, 333 U.S. 257, 268-70 & n.23 (1948)(noting that secret evidence has never been used to convict a person of a crime); Fuentes v. Shevin, 407 U.S. 62, 81 (1972) ("It has long been recognized that fairness can rarely be obtained by secret, one-sided determinations of facts decisive of rights"); U.S. ex rel. Knauff v. Shaughnessy, 338 U.S. 537, 551 (1950)("[t]he plea that evidence of guilt must be secret is abhorrent to free [persons], because it provides a cloak for the malevolent, the misinformed, the meddlesome, and the corrupt to play the role of informer undetected and uncorrected.")(citation omitted);

Const. amend. VII; see also Stoehr v. Wallace, 255 U.S. 239, 246 (1921) (pronouncing a post-investigation blocking power "adequate" because it entitled a person to "full hearing on his claim" "unembarrassed" by the executive determination "in a court having power to enforce it if found meritorious"); Draeger Shipping v. Crowley, 55 F. Supp 906 (S.D.N.Y. 1944) (U.S. corporation was given trial before being designated "the enemy" and allowed to continue operations pending trial).

[10]Use of secret evidence is "not likely to inspire the confidence of a distrustful public." Oregon v. Jackson, 36 P.3d 500, 505 (Or. 2001); Noble v. Parole Bd., 964 P.2d 990, 995 (Or. 1998) (the "secret machinations of a Star Chamber" cannot be used to affix a badge of infamy); see also United States v. Burns, 683 F.2d 1056, 1058-59 (7th Cir. 1982)(the lack of a record describing an ex parte contact is per se prejudicial).

Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 170, (1951) (recognizing that "fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights.") (Frankfurter, J., concurring). Clearly then, the Seventh Circuit could only rebut the presumption that GRF was entitled to confront its accusers in a jury trial if the Seventh Circuit identified a clear and paramount governmental interest.

However, the Seventh Circuit failed to identify a sufficiently important governmental interest which rebutted the presumption against secret evidence. In fact, it is a "firmly held main rule that a court may not dispose of the merits of a case on the basis of ex parte, in camera submissions" except in certain narrowly construed circumstances. American-Arab Anti-Discrimination Comm. v. Reno, 70 F.3d 1045, 1069 (9th Cir. 1995)("Only the most extraordinary circumstance could support one-sided process"). As explained below, the Seventh Circuit misstated the law to the extent it held that any of the exceptions authorized the use of secret evidence to impose an SDGT designation upon GRF.

To start, the Seventh Circuit improperly analogized IEEPA to FOIA when approving OFAC's use of secret evidence. Under FOIA, a court may utilize ex parte, in camera procedures to determine whether classified information can be withheld from a FOIA applicant. 5 U.S.C. § 552. However, the authority to use secret evidence under FOIA does not justify its use under IEEPA because a FOIA applicant does not have the same magnitude of property and liberty interests at stake as an SDGT designee. On the one hand, the FOIA applicant only has a privilege to access government documents based upon a Congressional discretionary decision to allow access. Houchins v. Koed, Inc., 438 U.S. 1, 15-16 (1978)(holding that an individual does not have a constitutional "right of access to government information"). Furthermore, the decision to withhold documents does not act as a permanent penalty or stigma upon the applicant. On the other hand, an SDGT designation deprives the designee of all its essential property and liberty interests and imposes a vile stigmatization which can last indefinitely if not forever. 50 U.S.C. §1701 (App. K)(allowing blocking to persist for duration of national emergency). Since the harm arising from an SDGT designation is significantly more severe than the denial of a FOIA application, Mathews requires that more procedural protections be afforded to a potential SDGT designee than for a FOIA applicant, making the Seventh

Circuit's FOIA cases inapposite here. E.g. Mathews, 424 U.S. at 335.

Similarly, the Seventh Circuit's reliance upon Rovario v. United States, 353 U.S. 53 (1957) to support the use of secret evidence under IEEPA was also misplaced. Under Rovario, the government was only authorized to use secret evidence to determine whether information about a confidential informant was privileged and not to dispose of the merits of a case. American-Arab Anti-Discrimination Comm., 70 F.3d at 1070. The privilege "must give way" to full disclosure if the information is relevant to the accused's defense or essential to a fair trial.[11] Roviaro, 353 U.S. at 61-62. Since OFAC used secret evidence to **convict** GRF of being an SDGT, and disclosure of this information was essential for a fair trial, OFAC's use of secret evidence was outside the scope of Rovario.

Additionally, the Seventh Circuit improperly relied upon the secret proceedings allowed by FISA to justify secret proceedings under IEEPA. Under FISA, the Attorney General may submit an application for surveillance to a FISA judge in camera and ex parte if the primary purpose of the surveillance is to gather foreign intelligence and not to conduct a criminal investigation. United States v. Johnson, 952 F.2d 565, 571-72 (1st Cir. 1992). However, if the surveillance turns up evidence of illegal conduct by the U.S. person, the government can only use that evidence to prove the U.S. person's guilt (or otherwise impose punishment) if the information is made available to the U.S. person. Id. at 571 ("government identified for [criminal defendant] the [FISA] tapes it intended to use at trial and made available to [defendants] all of the

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[11]The Seventh Circuit improperly relied upon People's Mojahedin Organization of Iran v. United States Dep't. of State, 182 F.3d 17 (D.C. Cir. 1999) because the designee in that case was a foreign person without constitutional rights. Likewise, National Council of Resistance of Iran v. Department of State, 251 F.3d 192 (D.C. Cir. 2001)(hereinafter "NCRI") did not support the Seventh Circuit's decision. In that case, the D.C. Circuit suggested in dicta that a U.S. person could be deprived of its property under the Anti-Terrorism and Effective Death Penalty Act based upon secret evidence. However the case it relied upon did not support this dicta. Specifically, NCRI relied upon United States v. Yunis, 867 F.2d 617, 623-24 (D.C. Cir. 1989) which case reaffirmed the principle that information about a confidential informant may be privileged if irrelevant to a case. Since Yunis simply reaffirmed the principle that secret evidence can be used to determine whether a privilege existed and not to determine the merits of a case, NCRI wrongly relied upon it to authorize the permanent designation of terrorists under the AEDPA. Cf. United States v. Rahmani, 209 F. Supp.2d 1045 (C.D. cal. 2002) (holding that AEPPA was unconstitutional).

tapes in advance of trial"); cf. Jencks v. Untied States, 353 U.S. 657 (1957). The only time that secret evidence can be used against a U.S. person under FISA is if the U.S. person collaterally attacks the determination made by the Attorney General that probable cause existed to perform the original foreign intelligence surveillance. 50 U.S.C. §1806(e). Since the SDGT designation imposed by OFAC pursuant to IEEPA is not a collateral determination, but is a final adjudication of GRF's guilt,[12] which can persist indefinitely, the SDGT designation is completely distinguishable from a finding of probable cause under FISA such that FISA's authorization for secret evidence cannot justify its use under IEEPA.

Furthermore, the Seventh Circuit improperly relied upon national security as a universal exception to the prohibition against secret evidence. App. 10A-11A (stating Constitution would be suicide pact if it required disclosure of information helpful to the enemy). Although the Constitution is not a "suicide pact", the government cannot exercise absolute power by simply invoking national security considerations.[13]

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[12]In fact, as explained in Kennedy v. Mendoza - Martinez, 372 U.S. 144, 165 (1963), branding someone an outlaw is an inherently criminal sanction.

> Dating back to the Magna Carta . . . it has been an abiding principle governing the lives of civilized men that no freeman shall be taken or imprisoned or disseised or outlawed or exiled without the judgment of his peers or by the law of the land. . . . [I]n keeping with this cherished tradition, punishment cannot be imposed without due process of law.

Since an SDGT designation does not convict property but is an in personam determination that GRF is an "outlaw", it can only be characterized as a criminal sanction limited by the 5th and 6th Amendments. Id. at 163-184 (holding that forfeiture of citizenship is inherently criminal); see also Austin v. United States, 509 U.S. 602 (1993)(majority and J. Scalia concurring opinions).

[13]See United States v. United States Dist. Ct., 407 U.S. 297, 320 (1972)(national security interests do not justify warrantless domestic security surveillance); Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952) (national security is not a universal exception to Constitution); cf. Communist Party of United States v. Subversive Activities Control Bd., 367 U.S. 1 (1955)(government could not designate an organization as a foreign power without having a hearing on the question of whether the organization was controlled by foreign power). Even the case relied upon by the Seventh Circuit for the proposition that the Constitution is not a "suicide pact", Kennedy, 372 U.S. at 165, held:

United States v. Robel, 389 U.S. 258, 263-64 (1967) ("even the war power does not remove constitutional limitations safeguarding liberties"). In fact, our nation is built upon the principle that we would rather see 100 guilty men go free than put one innocent man behind bars. Kennedy, 372 U.S. at 184. Accordingly, the Seventh Circuit improperly deviated from traditional due process principles when it justified the use of secret evidence based solely upon the government's interest in national security without factoring GRF's important rights into the equation.[14]

The Seventh Circuit also improperly relied upon Molerio v. FBI, 749 F.2d 815 (D.C. Cir. 1984), because that case did not authorize the government to deprive a U.S. person of all his property and liberty based on secret evidence. Instead, it only allowed the government to use secret evidence to dismiss a claim brought by a person who thought he was discriminated against when applying for a top secret FBI job. The use of secret evidence did not bar that person from seeking other

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> It is fundamental that the great powers of Congress to conduct war and to regulate the Nation's foreign relations are subject to the constitutional requirements of due process. The imperative necessity for safe guarding these rights to procedural due process under the gravest of emergencies has existed throughout our constitutional history... Id. at 160 (it would be suicide to prohibit executive from power of conscription).

[14]That is not to say that secret evidence can never be used under IEEPA; it may be constitutional to freeze a non-resident alien who has no constitutional rights using secret evidence. See Johnson v. Eisentrager, 339 U.S. 763, 770-71 (1950). However, once GRF makes a prima facie case of being a U.S. person, e.g. Zadvydas v. Davis, 533 U.S. 678, 693 (2001)(noting that "due process clause applies to all 'persons' within the United States even aliens"); due process rights should flow therefrom. E.g. Kennedy v. Mendoza - Martinez, 372 U.S. 144, 165 (1963)("it has been an abiding principle governing the lives of civilized men that no freeman shall be taken or imprisoned or disseised or outlawed or exiled without the judgment of his peers or by the law of the land"); Cole, supra n.9 at 26-27 ("when IEEPA was used solely to impose [sanctions] on foreign countries, it was a relatively noncontroversial form of nation-to-nation diplomacy. But when that same authority is targeted not at countries, but at political organizations and individuals, it raises serious constitutional concerns."). Since the government cannot appropriate a U.S. person's property for use in negotiating the end of a national emergency caused by enemy aliens without giving that U.S. person due process protection, defendants violated due process by failing to offer GRF these procedures.

employment or otherwise holding property. Indeed, the "state secrets privilege" has never been used by the government as a "sword" to support punishment imposed against U.S. citizens but only to shield confidential information from disclosure. American-Arab Discrimination Comm., 70 F.3d at 1070. Since the Government here does not seek to simply shield state information from disclosure in the adjudication of a tort claim but, instead, as a sword to deprive GRF of its property and liberty, it is clear that the Seventh Circuit overextended the state secret doctrine.

2. The Seventh Circuit Overextended IEEPA.

The Seventh Circuit's opinion also conflicts with precedent from other Circuits, as well as this Court, to the extent it held that OFAC was authorized under IEEPA to block GRF's property. Under IEEPA, OFAC is only authorized to block property if a foreign person has an interest therein. 50 U.S.C. § 1702(a)(1)(B) (authorizing the President to "regulate . . . any . . . transfer . . . of . . . or transactions involving, any property in which any foreign country or a national thereof has any interest")(App. K). In fact, IEEPA confers no power over persons at all but rather only deals with power over property (namely foreign property) within the reach of the U.S. law. As explained by the Undersecretary (Enforcement) for the Treasury Department:

> [IEEPA] provides . . . authority to impose . . . sanctions against **foreign** terrorists. Essentially, IEEPA authorizes the President to act against **foreign** threats[.] **Since IEEPA applies specifically to foreign threats, the country or entities/ individuals targeted in the Executive Order are not subject to U.S. jurisdiction.** OFAC instead asserts jurisdiction over U.S. persons, reaching the property of the [foreign] targets [who are otherwise not reachable] by acting against their property [interests] in the U.S.

Hearing on Dismantling the Financial Infrastructure of Global Terrorism, Before the House Committee on Financial Services, 107th Cong. (2001)

This Court's opinion in Dames & Moore confirms that it is inappropriate to apply IEEPA to purely domestic assets. Although the Court concluded "IEEPA constitutes specific congressional authorization

to the President to nullify . . . attachments" on foreign-owned property, it held IEEPA did not empower the President to "suspend claims pending in American Courts" of U.S. persons:

> We conclude that although the IEEPA authorized the nullification of the attachments, it cannot be read to authorize the suspension of the claims. **The claims of American citizens against Iran are not in themselves transactions involving Iranian property or efforts to exercise any rights with respect to such property.** An in personam lawsuit . . . does not focus on any particular property within the jurisdiction. **The terms of the IEEPA therefore do not authorize the President to suspend claims in American courts.**

Dames & Moore v Regan, 453 U.S. 654, 675 (emphasis added). The Court's holding is clear: IEEPA does not extend to property wholly owned by a U.S. citizen. Id.

Applied here, it is clear that OFAC improperly relied upon IEEPA and E.O. 13224 to block GRF's property because GRF's "assets" were wholly owned by GRF, which is a U.S. citizen. Indeed, the administrative record supporting OFAC's record fails to identify a single foreign person who has an interest in GRF's property. App. G. Nevertheless, the Seventh Circuit affirmed OFAC's SDGT designation based upon its observation that foreign persons had an interest in GRF because "GRF conduct[ed] its operations outside the United States". App. 6A-10A. The Seventh Circuit reasoned that GRF's overseas operations instilled in foreign persons an expectation that they might become beneficiaries of GRF's funds. Id. The Seventh Circuit went so far as to classify these foreign non-citizen's expectancies as "beneficial interests" in GRF. Id. However, the Seventh Circuit improperly held that GRF's operations overseas gave foreign persons an interest in GRF's property.[15]

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[15]Clearly, the Seventh Circuit made a mistake by holding that "GRF reads the word 'interest' in § 1702(a)(1)(B) as referring [only] to a legal interest". App. A. (emphasis in original). In fact, GRF does not differentiate between legal and equitable interests because both are interests in property. Instead GRF has argued that IEEPA only applies to legally enforceable interests (as opposed to legal interests) because, by definition, a "property interest" must be legally enforceable. See infra at 22.

Illinois law holds that only the state attorney general has standing to enforce the terms of a charitable trust on behalf of hopeful aid recipients. Compare People ex rel. Courtney v. Wilson, 63 N.E.2d 794, 800 (1945)(holding that individuals cannot interfere in administration of public trust) and Art Institute v. Castle, 133 N.E.2d 748, 751-52 (1956) ("[t]he mere hope of [charitable aid] is so remote as to be inconsequential")) with Burrows v. Palmer, 125 N.E.2d 484, 486-87 (1955) (beneficiary of private trust is entitled to enforce trust in equity). In other words, potential foreign recipients who may wish to receive GRF's funds have no "right", "title" or standing to compel aid from GRF, and no "claim" if relief is not disbursed to them. Such an attenuated "expectancy" of future relief is not a property interest as that term is generally understood. Black's Law Dict. at 812 (explaining that "interest . . . denote[s] a right, claim, title, or legal share in something"); see also id. at 156 (defining "beneficial interest" as a "right to income or principal of trust funds"). Furthermore, even if GRF gave money to a terrorist in the past, that act would not give the terrorist an interest in GRF's remaining funds; it would only subject GRF to potential criminal liability, forfeiture of its funds under both federal and Illinois law, and injunctive relief. 18 U.S.C. § 2339B (App. J); 50 U.S.C. § 1705 (App. K). By exaggerating the meager hope of aid held by the countless refugees helped by GRF in the past to the level of a "beneficial interest", the Seventh Circuit generated the wildest of legal fictions out of a gossamer speculation to justify oppressive conduct.

To support its analysis, the Seventh Circuit also misconstrued GRF's arguments. Specifically, the Seventh Circuit held that GRF construed IEEPA as excluding from its jurisdiction any property owned by U.S. persons or corporations. App. 8A ("turn[ing] to GRF's contention that IEEPA does not apply to corporations that hold charters issued within the United States . . ."). Building upon this mischaracterization of GRF's claim, the Seventh Circuit reasoned that if property owned by a U.S. person was immune from IEEPA, the results could be untenable; the Seventh Circuit surmised that bin Laden would be free to give money with impunity to (a) an Illinois bank to be held in

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Nevertheless, even under this broad construction of IEEPA, OFAC could not block a public trust like GRF's charitable funds based simply on the fact that a foreign person was a potential beneficiary; as explained below, a foreign beneficiary of a public trust does not have a legally enforceable interest, i.e. it is neither a legal nor an equitable property interest, and thus the expectation is not property.

trust for the benefit of al Qaeda or (b) a Delaware corporation formed and controlled by al Qaeda operatives. App. A (suggesting that the government's "ability to respond to an external threat [should not] be so easily defeated).

However, even under GRF's construction of IEEPA, OFAC could block a trust held by an Illinois bank for the benefit of al Qaeda, because al Qaeda's interest in the private trust as a beneficiary would amount to an interest in property. See supra at 21-22. Similarly, OFAC could effectively block all property of a U.S. corporation whose stock was held solely by a foreign entity such as al Qaeda by taking control of and directing the majority interest held by al Qaeda. 50 U.S.C. §1702(a)(1)(B) (authorizing OFAC to not only block property but "regulate" it). Accordingly, the United States would not be assailed by a parade of horribles if GRF's construction of IEEPA were adopted.

The Seventh Circuit also premised its "beneficiary" analysison the following:

> The [Supreme] Court observed [in Dames & Moore v. Regan, 453 U.S. 645 (1981)] that "claims of American citizens against Iran are not in themselves transactions involving Iranian property or efforts to exercise any rights with respect to such property." GRF reads this as excluding any claims or other property owned by citizens of the United States. We read it, to the contrary, as focusing on the nature of the property rather than the identity of its owner. Claims against Iran not only were owned by U.S. citizens but also were designed to generate funds that would be used beneficially within the United States. Claims owned nominally by U.S. citizens but effectively controlled by Iran, or designed to raise funds for the operation of the Iranian government, would have been treated differently, we are confident.

App. 8A-9A (emphasis by Seventh Circuit). However, the Seventh Circuit's observation that IEEPA was triggered by the "nature" of the property, i.e. whether it benefitted a foreign person, was wrong. In fact, Dames & Moore made it perfectly clear that OFAC's jurisdiction to block property depended only on whether a foreign person had an

identifiable property interest in the claim and not whether the foreign person might benefit from the claim. For example, the Supreme Court noted that a claim held by a U.S. person against Iran could be blocked once the citizen's claim was reduced to judgment because the U.S. person would then have a lien, or property interest, in particular Iranian property. Dames & Moore,453 U.S. at 675 ("An in personam lawsuit, although it might eventually be executed upon, is an effort to establish liability and fix damages and does not focus on any particular property within the jurisdiction"). Since a lien against Iran's property could not in any way benefit Iran, it is clear that Dames & Moore did in fact focus on property interests, and not the nature of property, when defining the scope of IEEPA. Therefore, even if the Seventh Circuit was correct that OFAC could block a claim prosecuted by a U.S. bank on behalf of a trust for which Iran was the beneficiary, the Seventh Circuit's rationale for this conclusion was inaccurate. Quite simply, the proceeds of a private trust held by a U.S. bank for Iran could be blocked under IEEPA not because the nature of the property, i.e. because it benefitted Iran, but because Iran had a beneficial interest which amounted to a property interest. See supra at 21-22 This analysis is inapplicable to justify blocking the property of GRF's public trust in which only GRF, a U.S. citizen, has an interest. Clearly then, the Seventh Circuit misstated the law with respect to the scope of the Executive's blocking powers under IEEPA.[16]

The Seventh Circuit's construction of IEEPA is clearly overbroad. Under its construction of IEEPA, OFAC could freeze a U.S. citizen who bought illegal drugs because al Qaeda obtains funds to support its terrorism by selling illegal drugs in the U.S. In other words, the U.S. citizen could be frozen because his drug use "benefits" terrorists who have an expectation that he will continue to fund their crimes. Furthermore, it would allow OFAC to completely shut down any charity

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[16]The Seventh Circuit's "beneficiary" analysis likewise fails to support OFAC's blocking of GRF's fundraising from U.S. persons. These solicitations are purely domestic transactions immune from IEEPA blocking because neither GRF nor U.S. persons are foreign nationals. Thus, the Seventh Circuit's determination is over-inclusive to the extent it found that all of GRF's activities were subject to blocking without applying IEEPA to GRF's property and liberty interests on a transaction by transaction basis. OFAC's blocking is also improper because it does not "deal with" a national emergency of foreign origin. In fact, OFAC has failed to identify a single piece of evidence establishing that terrorists have an interest in GRF's property.

including the Red Cross or United Way, which happened to give aid in terrorist hot spots. What makes this power subject to corruption is the fact that OFAC can make the decision to block based on political as opposed to evidentiary reasons. For example, both GRF and the Red Cross gave relief in Afghanistan during the U.S.'s actions against the Taliban, but only GRF was frozen. Clearly this bias against the Islamic charities created the appearance of religious persecution considering that the evidence of GRF's guilt is secret. Since the power to block under IEEPA is a political power and not a police power,[17] it should not be applied to punish U.S. persons because the results would do violence to the Constitution.[18]

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[17]The allegations and innuendo advanced by OFAC to support its blocking leaves little doubt that GRF is being frozen for political reasons, and not because GRF committed a crime. The "facts" do not even recite a crime, even with generous innuendo. App. G. Individually or in conjunction, the following facts cited by defendants are incapable of supporting the inference that GRF participated in prohibited transactions with blocked terrorists or provided material support to terrorists generally: (1) the charity sent money to or conducted operations in Afghanistan; (2) the charity's tax filing lacked detail and the charity refused to let a reporter dig through its business records on demand; (3) a former director of the charity fled the country; (4) a former director of the charity attended a mosque that a terrorist also attended; and (5) the charity disseminated views of radical Islamic leaders. At best, these facts suggests that GRF is guilty of associating with the wrong people. This is insufficient to support punitive action. American-Arab Ani-discrimination Committee v. Reno, 70 F.3d 1045, 1063 (9th Cir. 1995) ("'Guilt by association alone' violates the First Amendment.") See also United States v. Robel, 389 U.S. 258, 265-266 (1967); Healy v. James, 408 U.S. 169, 186 (1972), (Government must establish knowing affiliation and a specific intent to direct and further illegal aims, not mere advocacy and association.) Communist Party v. Subversive Activities Board, 367 U.S.1, 82-83, 84-85, text and n. 33 (1961).

[18]Defendants criticize GRF's construction of the executive's power under IEEPA as being too "mechanistic" because GRF defines the term "property interest" using state law principles. Defendants argue that they should be able to define "property interests" as broadly as they like so they can have the freedom they need to protect this Country in times of national emergency. Id. However, as can be seen from GRF's hypotheticals, defendants' definition of property is overbroad, unworkable, and arbitrary. For example, under OFAC's construction of IEEPA, the U.S. could impose a sanction on Russia because its companies are providing Iraq with military hardware, including GPS blocking systems which were used by Iraq against the U.S. in the last war, and extend that blocking to all U.S. companies which sold technology to those Russian firms. In fact, the government could designate those U.S. companies for blocking despite the fact that (a) the U.S. companies did not know that its technology would be sent to Iraq; and (b) exporting the technology to Russia was legal when done. Despite the audacity of such a result, that is exactly what defendants ask this Court to do, i.e. affirm the designation of GRF as an SDGT based upon insinuations about conduct that was legal

3. **The Seventh Circuit's Decision So Far Glosses-Over the *Ex Post Facto* and bill of attainder Inquiry, That It Departs From The Accepted And Appropriate Course Of Judicial Proceedings.**

The Executive Branch's use of IEEPA, to sanction a U.S. person for conduct which was legal when taken violates the Ex Post Facto and Bill of Attainder Clauses, and Fifth and Sixth Amendments. The framework of such an inquiry is well established but was disregarded below. A Court "must ascertain whether the legislature meant the statute to establish 'civil' proceedings." Kansas v. Hendricks, 521 U.S. 346, 361 (1997). If the intention of the legislature was to impose punishment, that ends the inquiry. If, however, the intention was to enact a regulatory scheme that is civil and nonpunitive, the court must further examine whether the statutory scheme is "'so punitive either in purpose or effect as to negate [the legislature's] intention' to deem it 'civil.' " Id. (quoting United States v. Ward, 448 U.S. 242, 248-249 (1980)).

The first of the two part inquiry is whether the legislature intended IEEPA to establish a regulatory scheme that is civil and nonpunitive. The Seventh Circuit below merely declared that the intention of the legislature was nonpunitive based upon its belief that IEEPA "does not define a crime." App. 11a. In doing so, the Court made its determination with little consideration and analysis despite the importance of the inquiry.

If the Court had made the proper inquiry, it could only come to the conclusion that IEEPA was enacted to authorize the President to direct economic sanctions against foreign countries as punitive measures. Indeed, defendants admits that E.O. 13224 was enacted to impose "financial sanctions" on "those foreign persons that support or otherwise associate with . . . foreign terrorists." E.g. Gov't Br. at 28. See also E.O. 13224, (recitals). Since the purpose of E.O. 13224 was to impose punishment on foreign terrorists, GRF has shown by clear proof that the "purpose" and "effect" of E.O. 13224 was "punitive", implicating GRF's rights under the Ex Post Facto and Bill of Attainder Clauses, as well as the Fifth and Sixth Amendments.

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when taken and unsupported by any finding of scienter. See Cole, supra n.9 at 6 (criticizing defendants' targeting of "material support" because it is overbroad).

The Seventh Circuit did not come to this conclusion because it failed to apply the seven factor test noted in Mendoza-Martinez, -Martinez, 372 U.S. at 168-169 (1963). The Mendoza factors are designed to help illuminate a nonpunitive regulatory statute as opposed to a punitive one and they have their earlier origins in cases under the Bill of Attainder and the Ex Post Facto Clauses. See Id. Those factors include the following:

> Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment--retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose.

See Id. By failing to even acknowledge these factors, it is clear that the Seventh Circuit so far glossed over the inquiry as to depart from proper procedure.

The Seventh Circuit's bare statement that IEEPA does not define a crime, does not end the inquiry there. Under well established Supreme Court precedent, the court must probe the purpose and effect of the statute. Indeed, the Ex Post Facto Clause as part of our Constitution was meant to prevent "arbitrary and potentially vindictive legislation." See Weaver v. Graham, 450 U.S. 24, 29 (1981). Accordingly, the Seventh Circuit was required, but failed, to explore the arbitrary application of IEEPA to GRF's pre-Executive Order 13224 conduct.

Application of IEEPA by the government was unconstitutionally ex post facto. The statute at hand does much more than impose a mere regulatory function. Its point, after all, is to send a message that probably would not otherwise be heard. By "freezing" an entity that gives money and aid to "hot spots," the government is broadcasting a warning in its "war on terror." Designating a person as a terrorist, a statement that affects reputation, credibility and carries harsh consequences such as disassociation from community affairs. Thus, the purported regulatory function is punitive; for certainly it is doubtful that

IEEPA's consequential effects are "less harsh than the sanctions of occupational debarment" that this Court has upheld in Hudson v. United States, 522 U.S. 93 (1997), De Veau v. Braisted, 363 U.S. 144 (1960), and Hawker v. New York, 170 U.S. 189 (1898).

There are practical effects of being listed as a "Specially Designated Government Terrorist" in the eyes of the world. See, e.g., Doe v. Pataki, 120 F.3d 1263, 1279 (C.A.2 1997) (noting "numerous instances in which sex offenders have suffered harm in the aftermath of notification--ranging from public shunning, picketing, press vigils, ostracism, loss of employment, and eviction, to threats of violence, physical attacks, and arson"). No doubt, the effects of violating IEEPA include profound humiliation and isolation as a result of the government's public declaration. The court below weighed none of these factors. The court below simply glossed over the crucial inquiry. Formal evidence of legislative intent does not justify requiring the "clearest proof" of penal substance in such a case. See Hudson, 522 U.S., at 113-114 (Souter, J., concurring in judgment). Thus, the mere fact that the statute "does not define a crime" is hardly dispositive.the Act involves imposition of an "affirmative disability or restraint." Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168 (1963).

CONCLUSION

THEREFORE, Petitioner GLOBAL RELIEF FOUNDATION, INC., requests that this Court GRANT its Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

Roger C. Simmons /ve/

Dated: July 3, 2003

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SUPREME COURT OF THE UNITED STATES
RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Pursuant to U.S. Supreme Court Rule 29.6, Global Relief Foundation, Inc., by and through its undersigned attorneys, Gordon & Simmons, LLP, hereby certify that: Global Relief Foundation, Inc. is a domestic, non-profit corporation chartered and headquartered in Illinois having no parent or publicly held company that owns 10% or more of the corporation's stock.

Roger C. Simmons, Esq.

SUPREME COURT OF THE UNITED STATES
RULE 29.5 CERTIFICATE OF SERVICE

Pursuant to U.S. Supreme Court Rule 29.5, Roger C. Simmons, an attorney, hereby certifies that on July 3, 2003, he caused the foregoing Appeal Brief and Appendix, to be served by overnight mail, to:

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EDITOR'S NOTE

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IN THE

Supreme Court of The United States

GLOBAL RELIEF FOUNDATION, INC.,

Petitioner,

v.

JOHN W. SNOW, *et al.*,

Respondents,

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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APPENDIX A

Global Relief Foundation, Inc. v. O'Neill,
315 F.3d 748 (7th Cir. 2002)

In the United States Court of Appeals For the Seventh Circuit

No. 02-2536

GLOBAL RELIEF FOUNDATION, INC.,
Plaintiff-Appellant,
v.
PAUL H. O'NEILL, Secretary of the Treasury, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 02 C 674—**Wayne R. Andersen**, *Judge*.

ARGUED OCTOBER 29, 2002—DECIDED DECEMBER 31, 2002

Before CUDAHY, COFFEY, and EASTERBROOK, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*.

Following the terrorist attack of September 11, 2001, the President issued an executive order declaring a national emergency and authorizing the Secretary of the Treasury to freeze the assets of groups that "assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism" to the extent that statutes permit freezes. Executive Order 13224 §1(d)(i), 66 Fed. Reg. 49079 (Sept. 23, 2001). Authority for this order lies in the International Emergency 2 No. 02-2536 Economic Powers Act (IEEPA), 50 U.S.C. §§ 1701-07, which after Executive Order 13224 was amended by the USA PATRIOT Act, Pub. L. 107-56, Title I, §106, 115 Stat. 272 (Oct. 26, 2001). On December 14, 2001, the Secretary used the delegated authority to block all assets of Global Relief Foundation, Inc., an Illinois charitable corporation that conducts operations in approximately 25 foreign entities, including Afghanistan, Albania, Bosnia, Kosovo, Iraq, Lebanon, Pakistan, Palestine (West Bank and Gaza), Russia (Chechnya and Ingushetia), Somalia, and Syria. The provision underlying this action is §1702(a)(1)(B), which provides that the President may

investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States[.]

Global Relief Foundation (which goes by the acronym GRF) denies that any "foreign . . . national" has an "interest" in its assets, and it asked the district court to enjoin the blocking order for this reason and several others said to be rooted in the Constitution. The district court denied this request, see 207 F. Supp. 2d 779 (N.D. Ill. 2002), and GRF has appealed. When the district court acted, the blocking order was an interim step pending investigation. The freeze on December 14 was accompanied by a search of GRF's headquarters, and the Treasury Department planned to use evidence obtained from the search, plus submissions it invited No. 02-2536 3 from GRF, to decide whether to extend the freeze. One element of relief that GRF requested was an injunction against the extension, which would be accomplished by naming GRF a "Specially Designated Global Terrorist" under Executive Order 13224. On October 18, 2002, shortly before oral argument, the Office of Foreign Assets Control listed GRF as a Specially Designated Global Terrorist. See <http://www.treas.gov/offices/enforcement/ofac/actions/20021018.html>. Designation does not change the status of GRF's assets and records, which remain in Treasury's control. But it does affect the scope of arguments available on appeal. Because the designation is a *fait accompli*, a court cannot enjoin its making—though a court might direct the Office of Foreign Assets Control to lift it. To the extent that GRF was attacking the factual support for the interim order, time has passed that issue by; the right question now is whether the designation of October 18 is supported by adequate information, and that question cannot be resolved until the

district court has assembled a new record. What is more, some of GRF's principal legal theories drop out of the case. It contended, for example, that Executive Order 13224, which was issued before enactment of the USA PATRIOT Act, could not have delegated to the Secretary of the Treasury those powers added to the IEEPA by the new law. The change that potentially affected this case was the addition to §1702(a)(1)(B) of language authorizing asset freezes pending investigation. Now that the investigative stage is over, however, the amendment to the IEEPA does not matter to the freeze, and it is correspondingly inappropriate for us to decide whether Executive Order 13224 delegates powers enacted after September 23, 2001. Appellees make a broader argument: that the appeal is moot and should be dismissed. Obviously the *suit* is live. Treasury has blocked GRF's accounts and thus effectively shut down its operations across the globe. A federal 4 No. 02-2536 court could order Treasury to end the freeze. When relief is possible, a lawsuit is not moot. See *Spencer v. Kemna*, 523 U.S. 1 (1998); *Hall v. Beals*, 396 U.S. 45 (1969). One application of this principle is that suits seeking money damages, as GRF does, cannot become moot unless the defendant satisfies the plaintiff's demand. See *Powell v. McCormack*, 395 U.S. 486, 498-500 (1969). Injunctive relief directing Treasury to lift all restrictions on GRF's assets and operations also remains an option. Even voluntary cessation by the defendants would not moot the case, while any possibility remained that they would again freeze GRF's assets. See *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Services*, 532 U.S. 598, 608 (2001); *Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167, 189 (2000). Still, appellees contend, the *appeal* is moot in the sense that word often takes when an appeal from the grant of preliminary injunctive relief is overtaken by the grant of permanent injunctive relief. Whether the record adequately supported relief pending trial is of no moment once the trial has been held and permanent relief entered. All that then matters is whether the record supports permanent relief. See, e.g., *Continental Training Services, Inc. v. Cavazos*, 893 F.2d 877, 880 (7th Cir.

1990). Just so, appellees insist, now that the freeze pending investigation has been replaced by a final order naming GRF as a Specially Designated Global Terrorist. This would be a good analogy if *all* that GRF wanted was review of the freeze in light of the information that Treasury possessed on December 14, 2001, or if the only point of the appeal had been to obtain an order preventing the Treasury Department from blocking the assets until it had reached a final decision. Those issues are behind us, and no resolution one way or the other could do GRF any good today. The premise of appellees' suggestion of mootness is that GRF's current requests are limited No. 02-2536 5 to its status pending final administrative resolution; appellees concede that the appeal would not be moot if GRF sought relief against any permanent blocking order. Suggestion of Mootness at 6-8. Yet GRF's ambition is not so limited. It contends, among other things, that the IEEPA *never* applies to the assets of any corporation that holds its charter from one of the United States. This argument, if successful, would knock out any freeze, preliminary or permanent, without regard to the strength of the evidence. If GRF is right on this score, then it is entitled to relief immediately. Dismissing this appeal, and directing GRF to start from scratch in the district court with a challenge to the designation of October 18, then would compound the injury by extending the length of an illegal administrative action. It is because of possibilities such as this that courts say that entry of a permanent injunction (or, here, a permanent administrative order) "usually" calls for dismissal of the appeal from preliminary relief. See *Burgess v. Ryan*, 996 F.2d 180, 184 (7th Cir. 1993). "Usually" is not always; one appropriate exception is for a legal argument that would annul *any* adverse decision, temporary or permanent. Now the scope of its ambition would not be enough if GRF had not advanced and preserved these arguments, but it has done what is required. Soon after receiving formal notice from Treasury that proceedings were under way that could end in its being named a Specially Designated Global Terrorist, GRF asked the district court to stave off that action. This request, in a document filed on June 5, 2002, and styled "Rejoinder to Defendants' Notice," asks the

court to block the designation and advances arguments that have been reiterated in the appellate briefs. Although the district judge did not expressly deal with this aspect of GRF's position, he did address many of the underlying legal arguments (such as the contention that the IEEPA does not apply to U.S. corporations). It is unnecessary to recite the details of GRF's arguments in the district court and this court. Defendants' argument that GRF has forfeited contentions that would carry over to the current circumstances is unsound. So on the defendants' own approach to mootness, at least some of the issues presented on appeal are live, and GRF is entitled to a prompt decision on them.

Let us turn, then, to GRF's contention that the IEEPA does not apply to corporations that hold charters issued within the United States. The argument is straightforward: a U.S. corporation is a U.S. citizen; the corporation owns all of its property (including its bank accounts); this property therefore cannot be "property in which any foreign country or a national thereof has any interest" for the purpose of §1702(a)(1)(B). The district court observed that two of the three members of GRF's board are foreign nationals, but this does not alter the fact that GRF is itself a citizen of the United States. Neither membership on the board nor ownership of stock affects the citizenship of the firm, which as a matter of corporate law has an existence separate from that of the directors and investors. Cases such as *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176 (1982), illustrate the application of this principle to federal statutes. Treaties that the United States has negotiated with many foreign nations allow citizens (including corporations) of those nations certain privileges within the United States. *Avagliano* holds that a U.S. subsidiary of a foreign corporation is a U.S. citizen, not a foreign citizen, for the purpose of these treaties, which meant that the subsidiary must comply fully with U.S. law even though 100% of its stock may be held by foreign nationals. Some statutes prescribe a different rule. The Foreign Sovereign Immunities Act, for example, treats a corporation as having the sovereign attributes of a government that owns the majority of its stock. 28 U.S.C. §1603(b)(2). Cf. *Patrickson v.*

Dole Food No. 02-2536 7 *Co.*, 251 F.3d 795 (9th Cir. 2001), cert. granted, 122 S. Ct. 2657 (2002) (posing the question whether indirect ownership, through a holding company structure, receives the same treatment). But under the Foreign Sovereign Immunities Act a corporation chartered within the United States always is treated as a private U.S. citizen, even if a foreign nation owns all of its stock. 28 U.S.C. §1603(b)(3). Given the holding of *Avagliano* and the norm reflected in §1603(b)(3), does it not follow that the property of any corporation chartered within the United States is domestic U.S. property? No, it does not follow, and for a simple reason. GRF reads the word "interest" in §1702(a)(1)(B) as referring to a *legal* interest, in the way that a trustee is legal owner of the corpus even if someone else enjoys the beneficial interest. See *Navarro Savings Association v. Lee*, 446 U.S. 458 (1980). The legal interest in GRF's property lies in the United States, but we need to know whether §1702(a)(1)(B) refers to legal as opposed to beneficial interests. The function of the IEEPA strongly suggests that beneficial rather than legal interests matter. The statute is designed to give the President means to control assets that could be used by enemy aliens. When an enemy holds the *beneficial* interest in property, that is a real risk even if a U.S. citizen is the legal owner. Consider for a moment what would happen if Osama bin Laden put all of his assets into a trust, under Illinois law, administered by a national bank. If the trust instrument directed the trustee to make the funds available for purchases of weapons to be used by al Qaeda, then foreign enemies of the United States would have an "interest" in these funds even though legal ownership would be vested in the bank. The situation is the same if al Qaeda incorporated a subsidiary in Delaware and transferred all of its funds to that corporation—something it could do without any al Qaeda operative setting foot in the 8 No. 02-2536 United States. What sense could it make to treat al Qaeda's funds as open to seizure if administered by a German bank but not if administered by a Delaware corporation under terrorist control? Nothing in the text of the IEEPA suggests that the United States' ability to respond to an external threat can be defeated so easily. Thus

the focus must be on how assets could be controlled and used, not on bare legal ownership. GRF conducts its operations outside the United States; the funds are applied for the benefit of non-citizens and thus are covered by §1702(a)(1)(B). This understanding is consistent with the portion of *Dames & Moore v. Regan*, 453 U.S. 654, 675 (1981), on which GRF relies. The Court observed that "claims of American citizens against Iran are not in themselves transactions involving Iranian property or efforts to exercise any rights with respect to such property." GRF reads this as excluding any claims or other property owned by citizens of the United States. We read it, to the contrary, as focusing on the nature of the property rather than the identity of its owner. Claims *against* Iran not only were owned by U.S. citizens but also were designed to generate funds that would be used beneficially within the United States. Claims owned nominally by U.S. citizens but effectively controlled by Iran, or designed to raise funds for the operation of the Iranian government, would have been treated differently, we are confident. See also *Centrifugal Casting Machine Co. v. American Bank & Trust Co.*, 966 F.2d 1348, 1353-54 (10th Cir. 1992) (looking to the nature of the interest, rather than the citizenship of its legal owner, to determine whether it is within scope of IEEPA). So the fact that GRF as a U.S. corporation owns all of its assets does not mean that the assets are free of any foreign national's interest. Cf. *Regan v. Wald*, 468 U.S. 222 (1984). A foreign beneficial interest does not automatically make the funds subject to freeze. We have nothing to say here about whether GRF supports terrorism (as Treasury has concluded) or instead provides humanitarian relief (as it describes itself). That question is open to review in the district court, on the record compiled by the agency before it named GRF as a Specially Designated Global Terrorist. What we hold is that the phrase "property in which any foreign country or a national thereof has any interest" in §1702(a)(1)(B) does not offer GRF a silver bullet that will terminate the freeze without regard to the nature of its activities. None of GRF's constitutional arguments has that effect either. There is no separation-of-powers problem, as *Dames & Moore* shows. The

Steel Seizure Case, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), dealt with a seizure of private assets under a President's inherent powers, which the Court deemed insufficient; Executive Order 13224, by contrast, delegates to the Secretary only those powers provided by statute.

Administration of the IEEPA is not rendered unconstitutional because that statute authorizes the use of classified evidence that may be considered *ex parte* by the district court. 50 U.S.C. §1702(c). *Ex parte* consideration is common in criminal cases where, say, the identity of informants otherwise might be revealed, see *Roviaro v. United States*, 353 U.S. 53 (1957), and in litigation under the Freedom of Information Act—where public disclosure would divulge the very information that the case is about and thus make it impossible for the government to maintain confidentiality even when the FOIA does not create a right of public access. See *EPA v. Mink*, 410 U.S. 73 (1973). A part of the Antiterrorism and Effective Death Penalty Act of 1996 parallel to §1702(c) has been sustained against constitutional challenge in two decisions with which we agree. See *Iran Council of Resistance v. Department of State*, 251 F.3d 192, 196 (D.C. Cir. 2001); *People's Mojahedin Organization v. Department of State*, 10 No. 02-2536 182 F.3d 17, 19 (D.C. Cir. 1999). See also, e.g., *United States v. Ott*, 827 F.2d 473, 476 (9th Cir. 1987), and *United States v. Belfield*, 692 F.2d 141, 147 (D.C. Cir. 1982), which hold that use and *ex parte* judicial review of classified information under the Foreign Sovereign Immunities Act are constitutionally proper. The Constitution would indeed be a suicide pact, *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 160 (1963), if the only way to curtail enemies' access to assets were to reveal information that might cost lives. Nor does the Constitution entitle GRF to notice and a preseizure hearing, an opportunity that would allow any enemy to spirit assets out of the United States. Although pre-seizure hearing is the constitutional norm, postponement is acceptable in emergencies. See, e.g., *Gilbert v. Homar*, 520 U.S. 924, 930 (1997); *FDIC v. Mallen*, 486 U.S. 230, 240 (1988). Risks of error rise when hearings are deferred, but these risks must be balanced against the potential for loss of life if assets should be

put to violent use. Opportunity to obtain recompense under the Tucker Act, 28 U.S.C. §1491(a), if the blocking turns out to be invalid, provides the private party with the very remedy that the Constitution names: just compensation. If the freeze is sustained on the merits, however, GRF does not have any grievance, any more than a cocaine ring has a right to recover the value of the illegal drugs or a thief a right to be paid the value of confiscated burglar's tools. See *Paradissiotis v. United States*, 304 F.3d 1271 (Fed. Cir. 2002). GRF's takings claim not only is premature—it must await decision on the validity of the Global Terrorist designation—but also is in the wrong court. It belongs to the Court of Federal Claims under the Tucker Act.

Other constitutional theories—such as GRF's contention that application of the IEEPA is an ex post facto law—are defective for too many reasons to count. For example, only criminal statutes are deemed ex post facto laws, and the No. 02-2536 11 IEEPA does not define a crime. Moreover, the IEEPA predates GRF's activities, and at all events aid to the enemies of the United States has been unlawful since the Nation's founding. Application of the IEEPA is not a bill of attainder; implementation of the statute is in the hands of the Executive and Judicial Branches, while a bill of attainder is a decision of guilt made by the Legislative Branch. See *United States v. Lovett*, 328 U.S. 303, 315 (1946). It is unnecessary to recite and reject the rest of this lot individually. Because we have dealt exclusively with legal contentions, our resolution of them is conclusive and not subject to reexamination in the district court when deciding whether GRF is entitled to a permanent injunction. But we have avoided any inquiry into the facts and do not attempt to anticipate the ultimate resolution of GRF's claim. The central question now becomes whether the evidence supports the agency's belief that GRF uses its assets to support terrorism. That question should be addressed and resolved expeditiously in the district court. The judgment denying GRF's request for an injunction that would compel the release of its assets while that issue remains open is affirmed.

CUDAHY, *Circuit Judge*, concurring: I am in agreement with the majority both with respect to mootness and to the merits, but

I write separately primarily to suggest the significance of the present determinations for future phases of the case.

On the issue of mootness, a detailed study of the arguments offered by GRF would lend support to the conclusion reached by the majority. GRF did seek at various 12 No. 02-2536 points to litigate the question of enjoining the government from blocking GRF's assets through a designation of GRF as a Specially Designated Global Terrorist. On the merits, the concept of "interest" as it relates to property useful to aliens for terrorist purposes may in some cases be tenuous and require careful attention in application, but is nonetheless valid in light of crucial national security concerns. GRF's constitutional objections are of varying degrees of merit, but its procedural complaints seem of greatest weight, even though not weighty enough to support preliminary relief. These procedural objections may not have been fully formulated in the context of GRF's designation as an SDGT. On the question of what is yet to be done, we have left factual matters entirely open, as they pertain both to permanent relief and to any preliminary relief that GRF might seek in the future. *See Adams v. City of Chicago*, 135 F.3d 1150, 1153 (7th Cir. 1998) (noting that denial of a preliminary injunction does not doom subsequent motions for temporary relief based on facts unavailable at the time of the first motion). The issues decided at this preliminary level appear entirely legal in nature and not subject to reexamination in any subsequent attempts at preliminary relief based on future factual developments. It is conceivable, of course, that GRF might be able to challenge this conclusion.

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Clerk of the United States Court of Appeals for the Seventh Circuit
USCA-02-C-0072—12-31-02

APPENDIX B

Correction Order,

No. 02 C 2536 (7th Cir. January 24, 2003)

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

January 24, 2003

Before

Hon. RICHARD D. CUDAHY, Circuit Judge

Hon. JOHN L. COFFEY, Circuit Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

GLOBAL RELIEF FOUNDATION, INC.,
Plaintiff-Appellant,

No. 02-2536 **v.**

PAUL H. O'NEILL, Secretary of the Treasury, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 02 C 674
Wayne R. Andersen,
Judge.

Order

The opinion of this court issued on December 31, 2002, is amended as follows:

Page 10, lines 5-6, change "Foreign Sovereign Immunities Act" to "Foreign Intelligence Surveillance Act."

APPENDIX C

Global Relief Foundation, Inc. v. O'Neill,
207 F.Supp.2d 779 (N.D.Ill. 2002)

Global Relief Foundation, Inc. v. O'Neill
207 F.Supp.2d 779
N.D.Ill.,2002.
June 11, 2002.

United States-based Islamic global humanitarian relief organization whose office was searched by the FBI and whose assets were frozen by the Office of Foreign Asset Control brought action against government officials, seeking declaratory and injunctive relief for the unfreezing of its assets and the return of property seized in the search. On the relief organization's motion for preliminary injunction, the District Court, Andersen, J., held that corporation was not likely to succeed on claims that the government's actions violated the Foreign Intelligence Surveillance Act (FISA), were not authorized by the International Emergency Economic Powers Act (IEEPA), or violated numerous constitutional provisions, and thus, was not entitled to preliminary injunction for return of seized property and unfreezing of assets on those grounds.
Motion denied.

Matters related to the conduct of foreign relations are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference; as a general principle, therefore, a federal court should avoid impairment of decisions made by the Congress or the President in matters involving foreign affairs or national security.
For global humanitarian relief organization, whose office was searched by the FBI pursuant to the Foreign Intelligence Surveillance Act (FISA), and whose assets were frozen by the Office of Foreign Asset Control (OFAC) pursuant to the International Emergency Economic Powers Act (IEEPA), to succeed on its complaint for mandatory

preliminary injunctive relief against government officials for the unfreezing of its assets and the return of property seized in the search, the relief organization had to make an exceptionally strong showing on the relevant preliminary injunction factors, since it was in essence challenging the power of the Executive Branch of the United States government to conduct foreign policy. Emergency Economic Powers Act, §§ 202 et seq., 50 U.S.C.A. §§ 1701 et seq.; Foreign Intelligence Surveillance Act of 1978, §§ 101 et seq., as amended, 50 U.S.C.A. §§ 1801 et seq.

Based on district court's in camera and ex parte review, under the Foreign Intelligence Surveillance Act (FISA), of government's post-search application for warrant to search corporate offices of, and of home of executive director of, domestic nonprofit corporation purportedly engaged in global humanitarian relief, the application established probable cause to believe that the corporation and the executive director were agents of a foreign power, as that term is defined for FISA purposes, at the time the warrantless search was conducted and the application was granted, and established that the corporation and its executive director were not targeted because of any protected First Amendment activities in which they may have engaged. U.S.C.A. Const.Amend. 1; Foreign Intelligence Surveillance Act of 1978, §§§§ 101(b)(2)(A), 304(e), 305(d-g), as amended, 50 U.S.C.A. §§§§ 1801(b)(2)(A), 1824(e), 1825(d- g).

An agency's interpretation of its own regulations must be given controlling weight when challenged, unless it is plainly erroneous or inconsistent with the regulation, especially in matters which involve foreign policy and national security considerations.

Government had power under International Emergency Economic Powers Act (IEEPA) to block or freeze, during pendency of FBI investigation whether domestic nonprofit corporation that was a United States person under the Act was linked to terrorist activities, the exclusively domestic assets of the corporation, as long as some foreign national had any interest in the corporation; at least two of the three directors of the corporation were, at all relevant times, foreign citizens who resided legally in the United States for many years, and thus, were "foreign nationals." Emergency Economic Powers Act, §§ 203(a)(1)(B), 50 U.S.C.A. §§ 1702(a)(1)(B); 31 C.F.R. §§§§ 535.311-535.312, 595.310.

Order of the Office of Foreign Asset Control (OFAC) blocking the assets of domestic nonprofit corporation purportedly engaged in global humanitarian relief during pendency of FBI investigation whether the corporation was linked to terrorist activities was a proper exercise of proviso of International Emergency Economic Powers Act (IEEPA) authorizing the President to block or stem the flow of humanitarian relief in cases of national emergency, rather than a violation of IEEPA's humanitarian aid exception. Emergency Economic Powers Act, §§ 203(b)(2), 50 U.S.C.A. §§ 1702(b)(2).

Order of the Office of Foreign Asset Control (OFAC) blocking the assets of domestic nonprofit corporation purportedly engaged in global humanitarian relief during pendency of FBI investigation whether the corporation was linked to terrorist activities was a proper exercise of delegated authority pursuant to provision of national emergency executive order authorizing the Secretary of the Treasury and his designee to take such other actions than the complete blocking of property or interest in property as the President is authorized to take

under International Emergency Economic Powers Act (IEEPA) if the Secretary of the Treasury deemed such other actions to be consistent with the national interests of the United States. Emergency Economic Powers Act, §§ 202 et seq., 50 U.S.C.A. §§ 1701 et seq.; Executive Order No. 13224, §§ 1 et seq., 50 U.S.C.A. §§ 1701 note.

Executive Order which stated that Secretary of the Treasury was authorized to employ all powers granted to the President by International Emergency Economic Powers Act (IEEPA) delegated fullest extent of President's statutory powers, including new and/or different powers subsequently granted by Congress to the President when IEEPA was amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act. Emergency Economic Powers Act, §§ 202 et seq., 50 U.S.C.A. §§ 1701 et seq.; Executive Order No. 13224, §§ 1 et seq., 50 U.S.C.A. §§ 1701 note.

A "bill of attainder" is a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial. U.S.C.A. Const. Art. 1, §§ 9, cl. 3.

Order of the Office of Foreign Asset Control (OFAC) blocking the assets of domestic nonprofit corporation purportedly engaged in global humanitarian relief during pendency of FBI investigation whether the corporation was linked to terrorist activities was not a "bill of attainder;" Congress took no action against the corporation, and thus, there was no "law" involved as required for a bill of attainder, and the order did not inflict "punishment" as required to implicate the bill of attainder clause. U.S.C.A. Const. Art. 1, §§ 9, cl. 3.

The Ex Post Facto Clause prohibits four types of laws: (1) laws that denominate an action as criminal even though the action was taken before the passing of the law and was innocent when taken; (2) laws that aggravate a crime or make it greater than it was when committed; (3) laws that change the punishment, and inflict a greater punishment, than the law applied to the crime when committed; and (4) laws that alter the legal rules of evidence and receive less, or different, testimony than the law required at the time of the commission of the offense in order to convict the offender. U.S.C.A. Const. Art. 1, §§ 9, cl. 3.

In order to violate the Ex Post Facto Clause, legislation must be penal or criminal in nature, must be retrospective, and must disadvantage the offender affected by it. U.S.C.A. Const. Art. 1, §§ 9, cl. 3.

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act, which amended the International Emergency Economic Powers Act (IEEPA), did not violate the Ex Post Facto Clause; the USA PATRIOT Act was neither penal nor criminal in nature and was not retrospective. U.S.C.A. Const. Art. 1, §§ 9, cl. 3.; Emergency Economic Powers Act, §§ 202 et seq., 50 U.S.C.A. § 1701 et seq.

A person claiming an uncompensated taking resulting from an action taken pursuant to International Emergency Economic Powers Act (IEEPA) must typically bring a claim for monetary relief under the Tucker Act in the Court of Federal Claims. 28 U.S.C.A. §§ 1491; Emergency Economic Powers Act, §§ 202 et seq., 50 U.S.C.A. §§ 1701 et seq.

A temporary blocking of assets under the International Emergency

Economic Powers Act (IEEPA) does not constitute a "taking" because it is a temporary action and not a vesting of property in the United States. U.S.C.A. Const.Amend. 5: Emergency Economic Powers Act, §§ 202 et seq., 50 U.S.C.A. §§ 1701 et seq.

Claim of domestic nonprofit corporation purportedly engaged in global humanitarian relief that executive order pursuant to which Office of Foreign Asset Control (OFAC) issued order blocking the assets of the corporation during pendency of FBI investigation whether the corporation was linked to terrorist activities was unconstitutionally vague was not ripe for review, where OFAC blocked the corporation's assets pending investigation to determine if further blocking or designation should take place under one or more criteria of the executive order, and there had not yet been any determination under the executive order as to whether designation or further blocking should take place. Executive Order No. 13224, §§ 1 et seq., 50 U.S.C.A. §§ 1701 note.

Domestic nonprofit corporation purportedly engaged in global humanitarian relief was not likely to succeed on its claim that government officials involved in blocking its assets under the International Emergency Economic Powers Act (IEEPA) during pendency of FBI investigation whether the corporation was linked to terrorist activities violated the corporation's due process rights by failing to provide notice and a meaningful opportunity to be heard prior to temporarily blocking its assets, and thus, was not entitled to preliminary injunction to unfreeze its assets on that ground. U.S.C.A. Const.Amends. 5, 14; Emergency Economic Powers Act, §§ 202 et seq., 50 U.S.C.A. §§ 1701 et seq.

Domestic nonprofit corporation purportedly engaged in global humanitarian relief was not likely to succeed on its claim that government officials involved in blocking its assets under the International Emergency Economic Powers Act (IEEPA) during pendency of FBI investigation whether the corporation was linked to terrorist activities violated the corporation's due process rights by providing inadequate post-blocking procedures, and thus, was not entitled to preliminary injunction to unfreeze its assets on that ground; OFAC provided several post-blocking options, including notification to the corporation of its right to submit evidence and argument if it believed the blocking was in error, which satisfied its due process obligations. U.S.C.A. Const.Amends. 5, 14; Emergency Economic Powers Act, §§ 202 et seq., 50 U.S.C.A. §§ 1701 et seq.

Domestic nonprofit corporation purportedly engaged in global humanitarian relief was not likely to succeed on its claim that executive order pursuant to which Office of Foreign Asset Control (OFAC) issued order blocking corporation's assets during pendency of FBI investigation whether corporation was linked to terrorist activities violated First Amendment, and thus, was not entitled to preliminary injunction to unfreeze its assets on that ground; President had power to issue executive order, which promoted important government interest of preventing terrorist attacks, government's action barred provision of financial support to terrorists and was unrelated to suppression of free expression, and incidental restrictions on First Amendment freedoms were no greater than necessary. U.S.C.A. Const.Amend. 1; Executive Order No. 13224, §§ 1 et seq., 50 U.S.C.A. §§ 1701 note.

Before a court can conclude that a fine is excessive under the Eighth Amendment, it must first determine that a fine was in fact paid to the

government, as the constitutional prohibition was intended to limit only those fines directly imposed by, and payable to, the government. U.S.C.A. Const.Amend. 8.

Domestic nonprofit corporation purportedly engaged in global humanitarian relief was not likely to succeed on its claim that executive order pursuant to which Office of Foreign Asset Control (OFAC) issued order blocking corporation's assets during pendency of FBI investigation whether corporation was linked to terrorist activities amounted to imposition of an excessive fine in violation of the Eighth Amendment, and thus, was not entitled to preliminary injunction to unfreeze its assets on that ground; the corporation was not required to make any sort of payment in cash, or in kind, to the government, and the government did not collect or receive any of the funds. U.S.C.A. Const.Amend. 8.

Domestic nonprofit corporation purportedly engaged in global humanitarian relief whose assets were blocked pursuant to order of Office of Foreign Asset Control (OFAC) during pendency of FBI investigation whether corporation was linked to terrorist activities was not likely to succeed on its claim that the International Emergency Economic Powers Act (IEEPA) violated the separation of powers doctrine, and thus, was not entitled to preliminary injunction to unfreeze its assets on that ground; many agencies operate under similar delegated power circumstances. Emergency Economic Powers Act, §§ 202 et seq., 50 U.S.C.A. §§ 1701 et seq.

Domestic nonprofit corporation purportedly engaged in global humanitarian relief was not likely to succeed on its claim that search of its office by the FBI pursuant to the Foreign Intelligence Surveillance

Act (FISA) as part of investigation whether corporation was linked to terrorist activities violated Fourth Amendment, and thus, was not entitled to preliminary injunction for return of seized property on that ground; FISA's safeguards provided sufficient protection for the rights guaranteed by the Fourth Amendment in the context of foreign intelligence activities. U.S.C.A. Const.Amend. 4; Foreign Intelligence Surveillance Act of 1978, §§ 101 et seq., as amended, 50 U.S.C.A. §§ 1801 et seq.

Domestic nonprofit corporation purportedly engaged in global humanitarian relief whose assets were blocked under order of Office of Foreign Asset Control (OFAC) during pendency of FBI investigation whether corporation was linked to terrorist activities was not facing criminal charges, and thus, was not likely to succeed on claims that it was deprived of Fifth and Sixth Amendment rights because it was being required to answer for a capital, or otherwise infamous crime, without presentment or indictment of Grand Jury, or that it was deprived of rights to speedy and public trial, impartial jury, notice of charges, opportunity to confront witnesses and compulsory process for obtaining witnesses, and therefore, was not entitled to preliminary injunction to unfreeze its assets on those grounds. U.S.C.A. Const.Amends. 5, 6.

Domestic nonprofit corporation purportedly engaged in global humanitarian relief, whose assets were blocked pursuant to order of Office of Foreign Asset Control (OFAC) during pendency of FBI investigation whether corporation was linked to terrorist activities, and whose office was searched by FBI as part of investigation, was not likely to succeed on claim that government officials' submission of ex parte, in camera documents in support of government's actions violated

corporation's due process rights, and thus, was not entitled to preliminary injunction for return of seized property and unfreezing of assets on that ground; government officials demonstrated compelling interest in national security that outweighed corporation's interest in ability to study and respond to evidence against it. U.S.C.A. Const.Amend. 5.

*784 Roger C. Simmons, Victor E. Cretella, III, Matthew H. Simmons, Shawn P. Cavenee, Gordon & Simmons, Frederick, MD, Thomas A. Durkin, Durkin & Roberts, Chicago, IL, for plaintiff.

Robert D. McCallum, Jr., Assistant General, Patrick J. Fitzgerald, United States Attorney, Thomas P. Walsh, Assistant United States Attorney, Chicago, IL, David J. Anderson, Joseph H. Hunt, Sandra M. Schraibman, John E. Smith, Elizabeth J. Shapiro, Adam J. Szubin, Anne M. Joseph, U.S. Department of Justice, Civil Division, Federal Programs Branch, Washington, DC, for defendants.

MEMORANDUM OPINION AND ORDER

ANDERSEN, District Judge.

This case is before the Court on the motion of plaintiff Global Relief Foundation, Inc. for preliminary injunctive relief pursuant to Federal Rule of Civil Procedure 65. For the following reasons, the motion is denied.

OVERVIEW

Before addressing the motion for preliminary injunction filed by the plaintiff, Global Relief Foundation ("Global Relief"), a brief description of this case is in order.

On December 14, 2001, the Federal Bureau of Investigation ("FBI") searched the headquarters of Global Relief and the home of its executive director. Pursuant to the searches, materials were seized for analysis by the FBI. Global Relief contends that both the search and seizure were unauthorized by law and unconstitutional. *785 The defendants maintain that both the search and seizure were lawfully authorized by the Foreign Intelligence Surveillance Act and that they were constitutional. This Court agrees with the defendants.

Also on December 14, 2001, the Office of Foreign Asset Control ("OFAC") of the United States Department of the Treasury issued a blocking order freezing the financial assets of Global Relief pending the FBI's investigation of what relationship, if any, Global Relief might have to the terrorists behind the September 11, 2001 attacks on the World Trade Center and the Pentagon. Global Relief contends that the order temporarily "freezing" its assets was not authorized by statute, executive order or the Constitution. The defendants maintain that this blocking order was both lawful and constitutional. They cite the International Emergency Economic Powers Act, as amended by the USA Patriot Act, as the statutory basis for the authority to issue the blocking order. This authority was granted first to the President and then delegated by him to the Treasury pursuant to Executive Order Number 13224. Once again, this Court agrees with the defendants.

The assets seized for analysis and the funds blocked by OFAC's order have been seized and blocked "pending investigation" of Global Relief and others. Thus far, no agency of the United States government has declared or requested any forfeiture of assets to the government. Nor

have any individuals or Global Relief been charged with any crimes. Hence, Global Relief's request for a preliminary injunction is directed only to the release of funds and materials seized for investigative purposes while the investigation itself is ongoing.

To justify its emergency search and, to some extent, the blocking order, defendants have asked this Court to review materials, *in camera* and *ex parte,* without revealing them to Global Relief or its attorneys. In accordance with our order of April 5, 2002, we have reviewed materials furnished by the FBI to us and have concluded that they are relevant to the ongoing investigation and that their disclosure to Global Relief, while the investigation is pending, could undermine this investigation and others of national significance.

BACKGROUND

Global Relief began operating in 1992 as a domestic, non-profit corporation chartered and headquartered in Illinois. According to its complaint, Global Relief claims to be a charitable organization that funds humanitarian relief programs throughout the world. These programs allegedly distribute food, fund schools for orphans, and provide medical services.

Global Relief characterizes itself as the largest U.S.-based Islamic charitable organization "with respect to the geographic scope of its relief programs." (Complaint ¶¶ 12.) As contributions to Global Relief increased (in 1995, the organization reported accepting donations totaling $431,155; by 2000, it reported nearly $3.7 million), it appears to have expanded the reach of its efforts. In 1995, it reported funding programs in Chechnya, Bosnia, Pakistan, Kashmir, and Lebanon. It

reported funding additional programs in Afghanistan and Azerbaijan in 1996, Bangladesh in 1997, Iraq and Somalia in 1998, Albania, Belgium, China, Eritrea, Kosovo, and Turkey in 1999, and, eventually, Ethiopia, Jordan, Palestine, and Sierra Leone in 2000. Global Relief also has funded programs in Gaza and the West Bank. (Complaint ¶¶ 11.) To assist with the distribution of humanitarian aid abroad, Global Relief established regional offices in Belgium, Azerbaijan, and Pakistan. Reportedly, such offices received hundreds of thousands of dollars in contributions, in addition to the amounts *786 reported by the headquarters in the United States. Although Global Relief has funded relief programs in the United States, over 90 percent of its donations have been sent abroad.

On September 11, 2001, terrorists attacked the United States. Individuals hijacked four commercial airliners containing passengers and crew and flew them deliberately into the two towers of the World Trade Center in New York City as well as into the Pentagon near Washington, D.C. The fourth plane was diverted from its path and crashed in rural Pennsylvania. Over 3,000 people were murdered.

On September 24, 2001, President George W. Bush declared a national emergency with respect to the "grave acts of terrorism and threats of terrorism ... and the continuing and immediate threat of further attacks on United States nationals or the United States." Exec. Order No. 13224, 66 Fed.Reg. 49074 (2001). The President determined that the acts perpetrated on September 11 constituted "an unusual and extraordinary threat to national security, foreign policy, and economy of the United States." In light of the "pervasiveness and expansiveness of the financial foundation of terrorists," the President

cited the need for financial sanctions against individuals or organizations that engage in or support terrorism throughout the world.

On December 14, 2001, pursuant to the Foreign Intelligence Surveillance Act, then-acting Deputy Attorney General Larry D. Thompson authorized the search of Global Relief's Bridgeview, Illinois office and the residence of its executive director. The FBI's Chicago Division Joint Terrorism Task Force conducted both searches. From the Global Relief office, the FBI seized items including computers and servers, modems, a cellular phone, hand-held radios, video and audio tapes, cassette tapes, computer diskettes, a credit card imprinter, foreign currency, U.S. mail, photographs, receipts, documents, and records. From the executive director's residence, the FBI seized computers, computer diskettes, video and audio tapes, cassette tapes, date books, a cellular telephone, a camera, a palm pilot, credit cards, foreign currency, photographs, documents, records, and $13,030 in U.S. currency. Since being seized, the items removed from both the Global Relief office and the executive director's residence have been secured in FBI custody for review and analysis.

Also, on December 14, 2001, pursuant to the International Emergency Economic Powers Act and President Bush's Executive Order, OFAC issued a "Blocking Notice and Requirement to Furnish Information" to Global Relief, which "froze," until further notice, the funds, accounts, and business records in which the organization had an interest. OFAC has claimed that it acted on the basis of substantial classified and unclassified information related to Global Relief's possible connections with terrorist organizations.

The blocking order advised Global Relief of the administrative

procedures available to it should it choose to contest OFAC's action, including the right to challenge the blocking and to seek licenses to resume operations in whole or in part. Although Global Relief applied for and was granted licenses to access limited blocked funds to pay for legal expenses, salaries, payroll taxes, health insurance, rent, and utilities, it did not challenge the blocking order itself through administrative procedures.

On January 28, 2002, Global Relief filed a petition for declaratory judgment and injunctive relief and for a writ of mandamus with this Court, naming Paul H. O'Neill, Colin L. Powell, John Ashcroft, R. Richard Newcomb, and Robert S. Mueller, *787 III, in their official capacities, as defendants (collectively, the "defendants"). In its petition, Global Relief requested that the defendants be ordered to "unfreeze" its assets and return the items seized during the search of the organization's office and the executive director's residence. In addition, on February 12, 2002, Global Relief filed a motion for preliminary injunction, arguing that the blocking of its assets and records was both unlawful and unconstitutional.

DISCUSSION

In its motion, Global Relief has requested a preliminary injunction from this Court that would serve to enjoin the defendants from: 1) blocking or otherwise controlling Global Relief's property; 2) barring Global Relief from doing business; 3) withholding Global Relief's records; 4) "smearing" its name; and 5) punishing Global Relief's donors for making donations to the corporation. (Global Relief Prelim. Injunction Brief at 2.) In this circuit, to obtain a preliminary injunction, Global Relief must show: 1) a reasonable likelihood of success on the merits; 2) the existence of an irreparable harm without the injunction; and 3) an inadequate remedy at law. *Anderson v. U.S.F. Logistics (IMC), Inc.*,

274 F.3d 470, 474-75 (7th Cir.2001); *Re/Max North Central, Inc. v. Cook*, 272 F.3d 424, 429 (7th Cir.2001); *Ty, Inc. v. Jones Group, Inc.*, 237 F.3d 891, 895 (7th Cir.2001). If Global Relief satisfies this initial burden, then the Court must balance the irreparable harm to the non-moving party if the injunction is granted against the irreparable harm to the moving party if the injunction is denied. *See Graham v. Medical Mutual of Ohio*, 130 F.3d 293, 295 (7th Cir.1997); *Grossbaum v. Indianapolis-Marion County Bldg. Auth.*, 100 F.3d 1287, 1291 (7th Cir.1996), *cert. denied*, 520 U.S. 1230, 117 S.Ct. 1822, 137 L.Ed.2d 1030 (1997); *Publications Int'l, Ltd. v. Meredith Corp.*, 88 F.3d 473, 478 (7th Cir.1996). The Court must also consider the public interest in denying or granting the injunction. *See Ty, Inc.*, 237 F.3d at 895.

In addition to these traditional preliminary injunction requirements, Global Relief faces additional burdens. Because Global Relief is requesting that this Court order the defendants to perform certain acts (i.e. "unfreeze" its assets and return the collected documents), it is essentially seeking a mandatory preliminary injunction. As the Seventh Circuit has previously held, since a "mandatory injunction requires the court to command the defendant to take a particular action, 'mandatory preliminary writs are ordinarily cautiously viewed and sparingly issued.' " *Graham*, 130 F.3d at 295 (citing *Jordan v. Wolke*, 593 F.2d 772, 774 (7th Cir.1978). *See also W.A. Mack, Inc. v. General Motors Corp.*, 260 F.2d 886, 890 (7th Cir.1958)) (finding that "mandatory injunctions are rarely issued and interlocutory mandatory injunctions are even more rarely issued, and neither except upon the clearest equitable grounds"). The burden is on Global Relief to establish that this extraordinary relief is justified.

[1] [2] Furthermore, by seeking injunctive relief against the decision to block its assets pending a federal investigation, Global Relief is in essence challenging the power of the Executive Branch of the United States government to conduct foreign policy. In so doing, Global Relief is asking this Court to approach the outer limit of its constitutional authority. Chief Justice Rehnquist, writing for the Court in *Regan v. Wald,* 468 U.S. 222, 242, 104 S.Ct. 3026, 82 L.Ed.2d 171 (1984), *reh'g denied,* 469 U.S. 912, 105 S.Ct. 285, 83 L.Ed.2d 222 (1984), quoted from *Harisiades v. Shaughnessy,* 342 U.S. 580, 589, 72 S.Ct. 512, 96 L.Ed. 586 (1952), which stated that "[m]atters related 'to the conduct *788 of foreign relations ... are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.' " As a general principle, therefore, this Court should avoid impairment of decisions made by the Congress or the President in matters involving foreign affairs or national security. *See Haig v. Agee,* 453 U.S. 280, 292, 101 S.Ct. 2766, 69 L.Ed.2d 640 (1981) ("Matters intimately related to foreign policy and national security are rarely proper subjects for judicial intervention"); *Palestine Info. Office v. Shultz,* 674 F.Supp. 910, 918 (D.D.C.1987), *aff'd,* 853 F.2d 932 (1988) (same). Accordingly, we conclude that, in order to succeed on its complaint for injunctive relief, Global Relief must make an "*exceptionally strong showing* on the relevant [preliminary injunction] factors." *Palestine Info. Office,* 674 F.Supp. at 918 (citing *Washington Metro. Area Transit Com'n v. Holiday Tours, Inc.,* 559 F.2d 841, 843 (D.C.Cir.1977)) (emphasis in original).

With these considerations in mind, we will now turn to the merits of Global Relief's motion for a preliminary injunction. At its core, Global Relief's motion raises two primary arguments. First, Global Relief contends that the blocking of its assets and the "seizure" of its records and documents pending an ongoing investigation by the FBI and

OFAC were acts outside the powers granted to those agencies by congressional statutes. Second, Global Relief argues that both the blocking of its assets and the search of the headquarters and the executive director's home violated numerous constitutional principles. We will address each of these arguments in turn.

I. *Likelihood of Success on the Merits*

The threshold factor for a preliminary injunction is the likelihood of success on the merits, *see Rust Env't & Infrastructure v. Teunissen,* 131 F.3d 1210, 1213 (7th Cir.1997), so we will proceed to analyze Global Relief's claims to determine whether they are likely to succeed.

A. Global Relief Has Not Shown A Likelihood Of Success On The Merits Of Its Statutory Arguments

1. *The Foreign Intelligence Surveillance Act*

As the first part of its statutory argument offered in support of its motion for a preliminary injunction, Global Relief contends that the search of its headquarters and the subsequent search of the home of Global Relief's executive director was an *ultra vires* action (which is defined as an act which is beyond the powers conferred on executive agencies by Congress). In response to this argument, the defendants have asserted that the searches conducted on December 14, 2001 were in accordance with the procedures identified in the Foreign Intelligence Surveillance Act, 50 U.S.C. §§ 1801 *et seq.*, (hereinafter "FISA").

FISA was passed by Congress in 1978 to "put to rest a troubling constitutional issue" regarding the President's "inherent power to

conduct warrantless electronic surveillance in order to gather foreign intelligence in the interests of national security." *U.S. v. Squillacote,* 221 F.3d 542, 552 (4th Cir.2000) (citing *ACLU Found. of S. California v. Barr,* 952 F.2d 457, 460 (D.C.Cir.1991)). FISA was enacted to create by statute a "secure framework by which the Executive Branch may conduct legitimate electronic surveillance for foreign intelligence purposes within the context of this Nation's commitment to privacy and individual rights." S.Rep. No. 95-604, at 15 (1978), *reprinted in* 1978 U.S.C.C.A.N. 3904, 3916.

To oversee the exercise of the powers granted by FISA to the Executive Branch and to ensure that the new investigatory *789 power is used constitutionally and lawfully, FISA established the Foreign Intelligence Surveillance Court, which is composed of seven federal district court judges appointed by the Chief Justice of the United States, to review applications for authorization of electronic surveillance aimed at obtaining intelligence information. *See* 50 U.S.C. §§ 1803. In 1994, FISA was amended to give the Foreign Intelligence Surveillance Court jurisdiction to hear applications for physical searches as well as electronic searches. *See* 50 U.S.C. §§ 1821-29. Each application to the Foreign Intelligence Surveillance Court must first be personally approved by the Attorney General. *See* 50 U.S.C. §§ 1804(a). The application must contain, among other things, a statement of facts to justify the belief that the target of the search is a foreign power or an agent of a foreign power, that the premises or property to be searched contains foreign intelligence information, and that the premises or property to be searched is owned, used, or possessed by a foreign power or an agent of a foreign power. Additionally, the application must contain a certification by a senior Executive Branch official that the information sought is foreign intelligence information which could not

reasonably be obtained by normal investigative techniques. *See* 50 U.S.C. §§ 1823(a).

When the target of the surveillance is a "United States person" (which the parties concede Global Relief is), the Foreign Intelligence Surveillance Court may issue an order authorizing the surveillance only if a FISA judge concludes there is "probable cause" to believe that the target of the surveillance is a foreign power or agent of a foreign power, that proposed "minimization procedures" are sufficient under the terms of the statute, that the certifications required by section 1823 have been made, and that the certifications are not "clearly erroneous." 50 U.S.C. §§ 1824(a)(3)--(5). Under the statute, an agent of a foreign power is any person "who knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States." 50 U.S.C. §§ 1801(b)(2)(A). FISA authorizes the federal district courts to review warrant applications and probable cause determinations made by the Foreign Intelligence Surveillance Court. *See* 50 U.S.C. §§ 1825(d)--(g).

Furthermore, FISA provides that, when the United States intends to use in a district court information derived from a FISA search or when an aggrieved party requests discovery of information related to a FISA application, the Attorney General must file "an affidavit under oath that disclosure or an adversary hearing would harm the national security of the United States." 50 U.S.C. §§ 1825(g). Attorney General John Ashcroft has filed such an affidavit in this case. This having been done, the statute requires us to "review *in camera* and *ex parte* the application, order, and such other materials relating to the physical search as may be necessary to determine whether the physical search of the aggrieved party was lawfully authorized and conducted." *Id.* As

we noted in our April 5, 2002 ruling denying Global Relief's motion to prevent consideration of certain materials *in camera* and *ex parte, see Global Relief Foundation, Inc. v. O'Neill,* 205 F.Supp.2d 885, 887-88 (N.D. Ill.2002), this Court decided to consider these submissions. We have done so on an *ex parte* basis and have not permitted counsel for Global Relief to review the submissions with us.

With this analytical framework in mind, we now turn to the facts of the case currently before us. As was discussed above, agents of the FBI arrived at the corporate headquarters of Global Relief and the *790 home of its executive director on December 14, 2001 and seized a considerable amount of material they felt was relevant to their investigation of Global Relief's activities. As the defendants have conceded in their briefs, no warrant had been obtained before the FBI arrived either at Global Relief's headquarters or the executive director's residence. Nevertheless, FISA includes a provision which states that, when the Attorney General declares that "an emergency situation exists with respect to the execution of a search to obtain foreign intelligence information" prior to the Foreign Intelligence Surveillance Court acting on the application, a warrantless search is authorized. 50 U.S.C. §§ 1824(e)(1)(B)(i). When such an emergency situation arises, the government must submit a warrant application to the Foreign Intelligence Surveillance Court within 72 hours of the warrantless search for approval. *See* 50 U.S.C. §§ 1824(e), *as amended by,* P.L. 107-108, 115 Stat. 1394, 1402 (2001). In this case, the failure of the FBI agents to present a FISA warrant on December 14 was caused by the Assistant Attorney General's declaration that an emergency situation existed with respect to the targeted documents and material. The defendants did submit a warrant application to the Foreign Intelligence Surveillance Court on December 15, as required by 50 U.S.C. §§

1824(e). We have reviewed the warrant that issued and the submissions to the Foreign Intelligence Surveillance Court in support of that

warrant.

[3]We conclude that the FISA application established probable cause to believe that Global Relief and the executive director were agents of a foreign power, as that term is defined for FISA purposes, at the time the search was conducted and the application was granted. We are also satisfied that Global Relief and the executive director were not targeted because of any protected First Amendment activities in which they may have engaged. Given the sensitive nature of the information upon which we have relied in making this determination and the Attorney General's sworn assertion that disclosure of the underlying information would harm national security, it would be improper for us to elaborate further on this subject. *See Squillacote,* 221 F.3d at 554 (finding probable cause to authorize FISA surveillance and declining to comment further on the probable cause issue when the Attorney General filed an affidavit); *United States v. Isa,* 923 F.2d 1300, 1304 (8th Cir.1991) (same).

This Court has concluded that disclosure of the information we have reviewed could substantially undermine ongoing investigations required to apprehend the conspirators behind the September 11 murders and undermine the ability of law enforcement agencies to reduce the possibility of terrorist crimes in the future. Furthermore, this Court is persuaded that the search and seizure made by the FBI on December 14 were authorized by FISA. Accordingly, we decline plaintiff's request that we declare the search invalid and order the immediate

return of all items seized.

2. *The International Emergency Economic Powers Act*

Global Relief also asserts that the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 *et seq.*, (hereinafter "IEEPA") does not authorize OFAC's blocking order freezing its assets. Specifically, Global Relief raises the following three arguments: 1) IEEPA did not grant the authority to block purely domestic assets "during the pendency of an investigation;" 2) the blocking order in this case directly violated IEEPA's humanitarian relief exception; and 3) the President never legally delegated the authority to OFAC to block the assets of an organization "during the pendency of an investigation." Additionally, *791 we note that Global Relief raised for the first time in its reply brief the argument that 18 U.S.C. §§ 2339B, and not IEEPA, is the proper statutory mechanism "to prevent [persons] subject to the jurisdiction of the U.S. courts from supporting designated foreign terrorist organizations." (Global Relief Reply Brief at 12.) Because the defendants have not cited this particular statutory provision in their briefs to justify OFAC's blocking order, we will not address it. *Cf. Marie O. v. Edgar,* 131 F.3d 610, 614 n. 7 (7th Cir.1997) (it is generally not appropriate to consider new arguments raised for the first time in a reply brief); *United States v. Magana,* 118 F.3d 1173, 1198 n. 15 (7th Cir.1997) (same); *Kastel v. Winnetka Bd. of Educ.,* 946 F.Supp. 1329, 1335 (N.D.Ill.1996).

i) *Statutory and Regulatory Background*

For most of this country's history, the United States government has utilized economic sanctions as a tool of its foreign policy. For most of the 20th Century, government imposed sanctions were controlled by

the Trading with the Enemy Act (hereinafter the "TWEA"), which was enacted in 1917. As amended in 1933, TWEA granted the President "broad authority" to "investigate, regulate ... prevent or prohibit ... transactions" in times of war or declared national emergencies. *See* 50 U.S.C. app. §§ 5(b); *Dames & Moore v. Regan,* 453 U.S. 654, 672, 101 S.Ct. 2972, 69 L.Ed.2d 918 (1981).

In 1977, Congress enacted IEEPA and amended TWEA to govern "the President's authority to regulate international economic transactions during wars or national emergencies." S.Rep. No. 95-466, at 2 (1977), *reprinted in* 1977 U.S.C.C.A.N. 4540, 4541. IEEPA provides that the economic powers granted the President "may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat." 50 U.S.C. §§ 1701(a); *Regan v. Wald,* 468 U.S. 222, 228, 104 S.Ct. 3026, 82 L.Ed.2d 171 (1984). As with TWEA, IEEPA authorized the President to:

investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest ... by any person, or with respect to any property, subject to the jurisdiction of the United States.

50 U.S.C. §§ 1702(a)(1)(B). As originally enacted, this language was

identical to the grant of power to the President under the parallel provision of TWEA.

In response to the September 11 terrorist attacks, Congress in October 2001 enacted the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub L. 107-56, 115 Stat. 272 (the "USA Patriot Act"), which, *inter alia,* expanded the authority of the President and his designees under IEEPA. Specifically, section 106 of the new act added the words "block during the pendency of an investigation" after the word "investigate" in the above-quoted section of IEEPA's section 1702(a)(1)(B). The USA Patriot Act also provided that, in case of judicial review of an IEEPA blocking order, any classified information upon which the blocking determination was made "may be submitted to the reviewing court ex parte and in camera."50 U.S.C. §§ 1702(c) *as added by* 115 Stat. at 278.*792 Shortly after the September 11 attacks but before the enactment of the USA Patriot Act, President Bush issued Executive Order 13224, effective on September 24, 2001, declaring a national emergency with respect to the "grave acts of terrorism ... and the continuing and immediate threat of further attacks on United States nationals or the United States."Exec. Order No. 13,224, 66 Fed.Reg. 49,079 (2001). In determining that actual and threatened terrorist acts constituted "an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States," the President invoked the powers granted by, *inter alia,* IEEPA. *Id.* The Executive Order designated 27 terrorists, terrorist organizations, and their supporters, and blocked their property and property interests that have been in the United States, that subsequently will come within the United States, or that come within the "possession or control" of U.S. persons. *Id.*

In addition, the Executive Order authorized the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to designate as subject to the provisions of the order any "foreign persons" whom he determines "have committed or ... pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States." *Id.* The order also authorized the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, to designate "persons" (defined in the order as individuals or entities) whose property or interests in property should be blocked because they "act for or on behalf of" or are "owned or controlled by" designated terrorists, or they "assist in, sponsor, or provide ... support for," or are "otherwise associated" with them. *Id.* Finally, for purposes of this opinion, the Executive Order also granted the Secretary of the Treasury the power "to employ all powers granted to the President by IEEPA ..." *Id.* The President authorized the Secretary of the Treasury to promulgate rules and regulations to carry out the purposes of the order and to re-delegate such functions if he so chose. *Id.*

Pursuant to a delegation of authority from the Secretary of the Treasury, OFAC has promulgated general regulations governing the various sanctions programs. *See* 31 C.F.R. pt. 500; *see also Wald*, 468 U.S. at 226 n. 2, 104 S.Ct. 3026. These regulations permit a designated individual or entity, or one whose assets have been blocked, to seek a license from OFAC to engage in any transaction involving blocked property. *See* 31 C.F.R. §§§§ 501.801-.802. In addition, the regulations establish a procedure to allow a person to "seek administrative reconsideration" of a designation if a party believes an

error has been made. *See* 31 C.F.R. §§ 501.807.

Believing that Global Relief "may be engaged in activities that violate" the Executive Order and IEEPA, on December 14, 2001, the Secretary of the Treasury issued a notice temporarily blocking Global Relief's accounts and business records pending further investigation. The notice informed Global Relief of its right to submit evidence to challenge the blocking and/or request agency licenses. The record indicates that Global Relief has filed numerous applications for licenses since December 14, most of which have been approved by OFAC. [4] In situations such as this when a plaintiff is challenging an agency's interpretation of its own regulations, we note that such an interpretation must be given "controlling weight unless it is plainly erroneous or inconsistent with the regulation." *793 *Stinson v. United States,* 508 U.S. 36, 45, 113 S.Ct. 1913, 123 L.Ed.2d 598 (1993); *see also Paradissiotis v. Rubin,* 171 F.3d 983, 988 (5th Cir.1999); *Consarc Corp. v. Iraqi Ministry,* 27 F.3d 695, 701 (D.C.Cir.1994); *D.C. Precision, Inc. v. U.S. Government,* 73 F.Supp.2d 338, 344 (S.D.N.Y.1999). This is especially true in matters which involve foreign policy and national security considerations. In these cases, we are "particularly obliged to defer to the discretion of executive agencies interpreting their governing law and regulations." *Paradissiotis,* 171 F.3d at 988 (citing *Haig v. Agee,* 453 U.S. 280, 292, 101 S.Ct. 2766, 69 L.Ed.2d 640 (1981) and *Miranda v. Secretary of Treasury,* 766 F.2d 1, 3-4 (1st Cir.1985)). With this in mind, we now turn to the substance of Global Relief's statutory contentions.

ii) *Does IEEPA grant the defendants the power to block domestic assets?*

[5] Global Relief argues that IEEPA does not allow the government to block or freeze the purely domestic assets of a U.S. person (which for purposes of the statute includes a charitable entity incorporated in the U.S.). Instead, Global Relief asserts that IEEPA only authorizes the President to regulate property in which foreign persons have an interest. (Global Relief Prelim. Injunction Brief at 7.) Because Global Relief is a U.S. person and its property is exclusively domestic, plaintiff reasons that OFAC did not have authority under IEEPA to block its assets pending investigation. We disagree with this limited reading of IEEPA and its implementing regulations.

As modified by the USA Patriot Act, section 1702(a)(1)(B) of IEEPA explicitly states that the President may "block during the pendency of an investigation ... any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of ... any right, power, or privilege with respect to ... any property in which any foreign country or a national thereof has *any* interest by any person ... subject to the jurisdiction of the United States." (Emphasis added). Congress' decision to use repeatedly the word "any" in this section of the statute guides our interpretation of the President's power to block during the pendency of an investigation. It is clear that Congress intended to provide the President with sweeping power to regulate all relevant property upon his declaration of a national emergency. Furthermore, if Congress had intended to only authorize the President to block foreign assets that were located within the United States, it could have made that intention clear. However, repeated use by Congress of the word "any" as well as its choice of the phrase "any property, subject to the jurisdiction of the United States," without an indication that it meant only *foreign* property, compels our conclusion that the powers granted to the President under IEEPA include the ability to block purely

domestic assets of a U.S. person pending an investigation.

Having said this, however, we must turn our attention to what constitutes an "interest" in property for purposes of IEEPA. In the regulations promulgated by OFAC with respect to IEEPA, "interest" is defined as "an interest of any nature whatsoever, direct or indirect" which can include "any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent." 31 C.F.R. §§§§ 535.311-.312, 595.310. Considering the high level of deference we are required to give an agency's interpretation of its own regulations, *see Stinson,* 508 U.S. at 45, 113 S.Ct. 1913, *supra,* we agree with the other courts that have interpreted IEEPA and its regulations that the term "any interest" must be construed in the broadest possible sense. *See Wald,* 468 U.S. at 224, 225-26, 233-34, 104 S.Ct. 3026 (repeatedly stating that the phrase *794 "any interest" is to be broadly defined); *Consarc Corp.*, 27 F.3d at 701-02 (same). Therefore, we conclude that the plain language of IEEPA does not limit the ability to block the domestic assets of a U.S. corporation during the pendency of an investigation when there is evidence that a foreign country or a national thereof has any interest in those assets.

With respect to the facts of this case, both parties agree that Global Relief is a United States citizen. However, the parties vigorously dispute to what extent any foreign national has had an interest in Global Relief and what the statutory consequences of that interest are. Global Relief claims that the nationality of its directors is irrelevant since the organization itself was incorporated in the United States. The defendants, however, argue that IEEPA sanctions their decision to block all of Global Relief's assets pending an investigation because

Global Relief is "operated and controlled by foreign nationals, [uses] numerous foreign offices, and it raises the overwhelming majority of its money for the very purpose of sending it overseas to foreign countries and nationals." (Defendants Brief in Opp. at 24.)

As even Global Relief has conceded, at least two of the three directors of Global Relief were, at all relevant times, foreign nationals. The organization's executive director and Rabih Haddad are both foreign citizens who have resided legally in the United States for many years. While Global Relief has attempted to downplay this foreign connection in its briefs, we conclude that both the executive director and Haddad are "foreign nationals," as that term is used in IEEPA. Furthermore, there can be no dispute that both of these individuals had a direct "interest" in the solicitation and distribution of Global Relief's assets and that Global Relief's executive director was instrumental in deciding which overseas entities and individuals were to receive Global Relief's contributions. In light of these facts, we are compelled to conclude that the defendants were authorized to block the assets of Global Relief pending an investigation pursuant to IEEPA because certain foreign nationals, including the executive director, had, at all relevant times, an "interest" in the operation of Global Relief. Therefore, we find that the blocking order issued by OFAC on December 14, 2001 was not an *ultra vires* act, but rather was authorized by IEEPA.

While our result comports with the plain language of IEEPA, we note that Global Relief's reading of the statute could completely undermine the statutory purposes of the act. If Global Relief's interpretation of IEEPA were correct, then any foreign person or entity could create a corporation under the laws of any state and then use that "domestic"

corporation to direct and fund acts of terror against the United States. We disagree. The simple act of domestic incorporation is not sufficient to exempt an organization from IEEPA regulation if, as the statute says, a foreign national has "any interest" in the organization or its funds.

iii) *Does IEEPA's humanitarian exception apply in this case?* The second prong of Global Relief's statutory argument is that OFAC's blocking order was an *ultra vires* action because it directly violated IEEPA's humanitarian relief exception. This provision states:

[t]he authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly ... donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing and medicine, intended to be used to relieve human suffering, except to the extent that the President determines *795 that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 1701 of this title, (B) are in response to coercion against the proposed recipient or donor .... 50 U.S.C. §§ 1702(b)(2). This language makes it clear that, notwithstanding the declaration of a national emergency, Congress intended that IEEPA would exempt humanitarian aid donations from executive regulation *unless* the President makes further findings that humanitarian aid would seriously impair his ability to deal with the emergency or would endanger U.S. armed forces. *See Veterans Peace Convoy, Inc. v. Schultz*, 722 F.Supp. 1425, 1429 (S.D.Tex.1988). Nevertheless, Global Relief asserts that "the power to regulate humanitarian activities by U.S. persons is limited to issuing blocking orders prohibiting all U.S. persons from providing aid to specified foreign persons or in specified foreign locales and is not a power to

single out a particular U.S. person as subversive and strip it of the right to provide humanitarian aid to anyone." (Global Relief Prelim. Injunction Brief at 12.) We disagree.

No doubt cognizant of the humanitarian relief exception included in section 1702(b)(2) of IEEPA, President Bush explicitly stated in his Executive Order that "the making of donations of the type specified in section [1702(b)(2)] by United States persons to persons determined to be subject to this order would seriously impair [the President's] ability to deal with the national emergency declared in this order, and would endanger Armed Forces... and [the President] hereby prohibit[s] such donations." Exec. Order 13224, §§ 4. This statement clearly was intended to trigger the presidential findings proviso of section 1702(b)(2) whereby Congress specifically authorized the President to block or stem the flow of humanitarian relief in cases of national emergency.

This Court must be guided by what we view as the intent of Congress in passing the humanitarian relief exception, and, in this regard, the language of the statute speaks for itself. *See United States v. Turkette,* 452 U.S. 576, 580, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981) (if statutory language is unambiguous, that language must be regarded as conclusive). The humanitarian relief exception applies explicitly to "articles, such a food, clothing, and medicine, intended to be used to relieve human suffering." 50 U.S.C. §§ 1702(b)(2). This means that any charitable aid that Global Relief provides both domestically and abroad falls within the scope of the statute.

Once it has been shown that humanitarian aid is within the ambit of the statute, Congress has explicitly determined that the President can

directly block its distribution as long as he determines that the donations "would seriously impair his ability to deal with any national emergency." *Id.* It is important to note that Congress did not include any sort of temporal or geographic limitation on the President's ability to block humanitarian aid. There is no statement that the President can only block the distribution of international aid or that he can only block aid to specific foreign persons in specified foreign locations. Instead, Congress enacted broad, sweeping language which authorized the President to block any and all humanitarian efforts by the targeted entity so long as he declares that the provision of such relief would jeopardize his ability to deal with a national emergency.

In this case, we have already noted that President Bush made the required declaration in his Executive Order that the making of charitable donations by the targeted entities would impair his power to deal with the national emergency following *796 the September 11 attacks. OFAC then used the powers delegated to it by the Secretary of the Treasury to block the ability of Global Relief to dispense its humanitarian aid both domestically and internationally. Therefore, based on our review of the statute and the discussion above, we find that OFAC's actions in issuing the blocking order were not *ultra vires* because the defendants strictly complied with the unambiguous language of section 1702(b)(2) of IEEPA. *See Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579, 636-37, 72 S.Ct. 863, 96 L.Ed. 1153 (1952) (an action "executed by the President pursuant to an Act of Congress would be supported by the strongest of presumptions and the widest latitude of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it.") (Jackson, J. concurring).

iv) *Did the President legally delegate to OFAC the authority to*

block assets during the pendency of an investigation?

In its final statutory argument in support of its motion for a preliminary injunction, Global Relief asserts that OFAC was never legally delegated the power to block assets "during the pendency of an investigation" pursuant to IEEPA. Specifically, Global Relief contends that the blocking order was *ultra vires* because President Bush only delegated to the defendants in section 1(c) of his Executive Order the power "to block" property of persons *determined* to be sponsoring terrorism. Global Relief further argues that, because the defendants have not *determined* that it acted for or was associated with a terrorist organization, the blocking order was outside the authority delegated to OFAC by the President and the Secretary of the Treasury. Additionally, Global Relief argues that President Bush "could not have delegated the power 'to block during the pendency of an investigation' in Executive Order 13224 even if he had expressed such an intent because President Bush did not have that power to delegate when he signed the Executive Order." (Global Relief Prelim. Injunction Brief at 15.) We will address each of these arguments in turn.

First, Global Relief argues that "[i]nstead of granting all his power, including the power to nullify. void, prevent, and prohibit any acquisition or transfer of property, President Bush only delegated to defendants the power 'to block' property of persons determined to be sponsoring or associated with other blocked entities." (*Id.* at 14.) We must reject this argument because it focuses only on one isolated section of the Executive Order without considering the order as a whole.

Global Relief is correct that section 1(c) of the Executive Order does limit the effect of the order's blocking provision to those entities

determined by the Secretary of the Treasury (as well as the Secretary of State and the Attorney General) to be connected with foreign terrorists. Section 1(c) states that the property of "persons determined by the Secretary of the Treasury ... to be owned or controlled by ... persons to be subject to subsection 1(b), 1(c), or 1(d)(i) of this order" is blocked. Exec. Order 13224, §§ 1(c). However, Global Relief seems to have assigned some special meaning to the word "determined." Apparently, Global Relief feels that the Secretary of the Treasury and OFAC have not "determined" that it is sponsoring or associated with foreign terrorists. This is a curious argument for Global Relief to make. Global Relief's complaint and numerous briefs paint a vivid picture of the damage it has allegedly suffered as a result of the defendants' "determination" that Global Relief was associated with funding foreign terrorists.

*797 [7] Nevertheless, even putting Section 1(c) of the Executive Order aside, Section 5 of the order authorizes the Secretary of the Treasury (and his designee) to "take such other actions than the complete blocking of property or interest in property as the President is authorized to take under IEEPA ... if the Secretary of the Treasury ... deems such other actions to be consistent with the national interests of the United States." Exec. Order 13224, §§ 5. Our reading of this section of the order informs us that a blocking of assets "during the pendency of an investigation" is contemplated as a permissible course of action because such a blocking order is expressly authorized by section 1702(a)(1)(B) of IEEPA, as amended by the USA Patriot Act. In other words, OFAC's December 14 order blocking the assets of Global Relief during the pendency of its investigation certainly falls within the scope of section 5 of the Executive Order. Therefore, we conclude that OFAC's actions in blocking Global Relief's assets

pending investigation were the result of a legal delegation of authority in the Executive Order from the President to OFAC.

This conclusion ties neatly into our analysis of Global Relief's second statutory delegation argument. In this section of its brief, Global Relief asserts that President Bush could not legally delegate to the Secretary of the Treasury and OFAC the power to block certain assets pending an investigation because, at the time he signed the Executive Order, IEEPA had not yet been amended by the USA Patriot Act to add this particular blocking power to the President's arsenal of economic weapons. In Global Relief's own words, "[t]o construe President Bush's invocation of IEEPA on September 23 to delegate powers that President Bush did not even have would violate fundamental canons of statutory construction." (Global Relief Prelim. Injunction Brief at 15.) For the following reasons, we reject this argument.

To address this contention properly, we must revisit the factual background of this case. Executive Order 13224, which delegated any and all presidential powers under IEEPA to the Secretary of the Treasury and his designee OFAC, was implemented on September 23, 2001. On October 26, 2001, President Bush signed the USA Patriot Act, which, as we have said before, added the ability to block "during the pendency of an investigation" to his other powers when a national emergency is declared under IEEPA. It is important to remember that the Executive Order delegated to the Secretary of the Treasury and his designee the authority "to employ all powers granted to the President by IEEPA." Exec. Order 13224, §§ 7. Finally, on December 14, 2001, OFAC issued and executed a blocking order freezing all of Global Relief's assets pending an investigation of its conduct.

Given this sequence of events, it is clear that on December 14, OFAC was empowered by IEEPA and the USA Patriot Act to issue the order blocking Global Relief's assets pending investigation. The USA Patriot Act amendments to IEEPA had been in effect for at least a month prior to the execution of the blocking order against Global Relief. Therefore, we cannot accept Global Relief's argument that President Bush did not legally delegate his blocking powers under IEEPA to the Secretary of the Treasury and OFAC.

[8] We reach this conclusion despite Global Relief's argument that the powers of IEEPA are not self-executing and that neither the President nor OFAC were authorized to block during the pendency of an investigation unless he had first amended his Executive Order by publication in the Federal Register. Global Relief argues, in effect, that every time a statutory *798 change or new enactment has the effect of altering the scope or the applicability of an Executive Order, the Executive Order must be republished to legally incorporate within it the change of powers caused by the new statute. As a matter of regulatory efficiency, this argument makes little sense. To avoid this problem, presidents draft their executive orders in such a way as to foresee the future enactment of statutes by Congress. In terms of Executive Order 13224, section 7 states that the Secretary of the Treasury is authorized to "employ *all powers* granted to the President by IEEPA." Such open-ended wording leaves little doubt that the President intended to delegate to his subordinates the fullest extent of his statutory powers, including new and/or different powers subsequently granted by Congress to the President. Accordingly, we conclude that the defendants' actions in implementing the December 14 blocking order were the result of a legal delegation of the President's authority under IEEPA and the USA Patriot Act. Thus, the blocking order was not an

ultra vires act.

3. *Summary*

In the first part of its motion for a preliminary injunction, Global Relief argued there was a likelihood that it would succeed on the merits of its claims concerning FISA and IEEPA. Specifically, Global Relief asserted that the search of its corporate headquarters and the home of its executive director violated FISA and that the order blocking Global Relief's assets pending an investigation was not authorized under IEEPA. As discussed in significant detail above, we have rejected these arguments. Rather, we hold that the search of the headquarters and the executive director's home complied with the statutory safeguards of FISA. With respect to IEEPA, we hold that IEEPA does not as a matter of law apply only to the foreign property interests of foreign nationals. Instead, the powers included in IEEPA can be directed toward purely domestic assets of an U.S. citizen as long as some foreign national has an interest in the domestic corporation. Furthermore, OFAC's December 14 blocking order did not violate IEEPA's humanitarian relief exception. Finally, we conclude that President Bush legally delegated his authority under IEEPA to block assets during the pendency of an investigation to the Secretary of the Treasury and his designee OFAC. Therefore, based on these holdings, we find that Global Relief has not established that there is a likelihood that it would succeed on the merits of its statutory claims.

B. Global Relief Has Not Shown That It Has A Reasonable Likelihood Of Success On the Merits Of Its Constitutional Arguments

In its motion for preliminary injunction, Global Relief argues that the

defendants' actions violated numerous provisions of the Constitution. We will analyze each of these constitutional claims to determine whether Global Relief is likely to succeed on the merits of its claims.

1. *The Bill of Attainder Clause*

Global Relief first argues that the defendants' actions in "designating it as a terrorist" and "seizing and forfeiting its assets" and "outlawing other U.S. persons from transacting business with it" violate the Bill of Attainder Clause, U.S. Const. art. 1, §§ 9, cl. 3.

[9] A bill of attainder is "a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial." *Selective Serv. Sys. v. Minnesota PIRG,* 468 U.S. 841, 846-47, 104 S.Ct. 3348, 82 L.Ed.2d 632 (1984) (quoting *799 *Nixon v. Adm'r of Gen. Services,* 433 U.S. 425, 468, 97 S.Ct. 2777, 53 L.Ed.2d 867 (1977)). *See also Dehainaut v. Pena,* 32 F.3d 1066, 1070 (7th Cir.1994), *cert. denied,* 514 U.S. 1050, 115 S.Ct. 1427, 131 L.Ed.2d 309 (1995). Global Relief argues that, in this case, Congress determined it to be worthy of punishment, designated it guilty and proceeded to impose punishment in violation of the Bill of Attainder Clause.

[10] We find that Global Relief is not likely to succeed on this claim because there is no "law" involved and because the defendants' actions did not inflict "punishment."

i) *Congress Took No Action Against Global Relief*

In this case, there is no *law* that legislatively inflicted punishment on Global Relief. Contrary to Global Relief's assertions, *Congress* did not

place Global Relief on any list of suspected terrorists or potential supporters of terrorism. Global Relief is complaining about the actions of OFAC, an executive agency, and the issuance of its temporary blocking order. The actions of OFAC, however, did not *legislatively* determine guilt. *See Selective Service,* 468 U.S. at 846, 104 S.Ct. 3348. "The bulk of authority suggests that the constitutional prohibition against bills of attainder applies to legislative acts, not to regulatory actions of administrative agencies." *Walmer v. United States Dep't of Defense,* 52 F.3d 851, 855 (10th Cir.1995) (citations omitted). "No circuit court has yet held that the bill of attainder clause, U..S. Const. art I, §§ 9, cl. 3, applies to regulations promulgated by an executive agency." *Paradissiotis,* 171 F.3d at 988 (citing *Walmer,* 52 F.3d at 855); *Dehainaut,* 32 F.3d at 1070-71; *Cooperativa Multiactiva de Empleados de Distribuidores de Drogas "Coopservir LTDA." v. Newcomb,* Civ. Action No. 98-0949, slip op. at 10 (D.D.C. Mar. 29, 1999) ("*Coopservir*"), *aff'd* 221 F.3d 195 (2000). Therefore, Global Relief is not likely to prevail in proving a violation of the Bill of Attainder Clause because there was no action taken against it by Congress and no law that legislatively determined Global Relief's alleged guilt.

ii) *Defendants' Actions Do Not Constitute "Punishment "*

In addition, the defendants' actions do not inflict "punishment" upon Global Relief "without provision of the protections of a judicial trial." *See Nixon v. Administrator of General Services,* 433 U.S. 425, 468, 97 S.Ct. 2777, 53 L.Ed.2d 867 (1977). Neither the identification of Global Relief as one to be investigated for possible support of terrorism nor the seizure and temporary blocking of Global Relief's assets is likely to constitute punishment under the Bill of Attainder Clause.

In determining whether legislation inflicts "punishment" such that it implicates the Bill of Attainder Clause, the Supreme Court has considered three factors: 1) whether the challenged statute falls within the historical meaning of legislative punishment; 2) whether the statute, "viewed in terms of the type and severity of burdens imposed, reasonably can be said to further nonpunitive legislative purposes;" and 3) whether the legislative record "evinces a congressional intent to punish." *Selective Service,* 468 U.S. at 852, 104 S.Ct. 3348.

In this case, we find that OFAC's identification of Global Relief as one to be investigated for possible support of terrorism and its temporary blocking of Global Relief's assets does not constitute "punishment" within the meaning of the Bill of Attainder Clause. Not all harm or inconvenience resulting from governmental authority constitutes "punishment." *See Nixon,* 433 U.S. at 472, 97 S.Ct. 2777; *800 *DeVeau v. Braisted,* 363 U.S. 144, 160, 80 S.Ct. 1146, 4 L.Ed.2d 1109 (1960). Moreover, the temporary blocking of Global Relief's assets does not inflict a type of punishment historically viewed as prohibited by the Bill of Attainder Clause, such as a death sentence, imprisonment, banishment, or a punitive confiscation of property. *Id.* Although Global Relief's assets are temporarily blocked during OFAC's investigation, such a blocking does not constitute a punitive confiscation of property because no forfeiture in favor of the government has occurred and because Global Relief has received OFAC licenses to continue some of its operations.

Second, defendants' actions seem motivated by a desire to protect the health and well-being of the nation by reducing the likelihood of future terrorist attacks against the United States and its interests rather than

by a desire to punish Global Relief. Hence, these actions do not constitute punishment pursuant to the Bill of Attainder Clause, because that "will be found only where the statutory burden is ... 'so disproportionately severe and so inappropriate to nonpunitive ends' ... that a legislative desire to punish can be discerned." 640 Broadway Renaissance Co. v. Cuomo, 740 F.Supp. 1023, 1035 (S.D.N.Y.1990), *aff'd* 927 F.2d 593 (2d Cir.1991) (quoting *Nixon,* 433 U.S. at 474, 97 S.Ct. 2777). Global Relief bears the burden of showing "that the legislature's action constituted punishment and not merely the legitimate regulation of conduct." *Nixon,* 433 U.S. at 476 n. 40, 97 S.Ct. 2777. In this case, Global Relief is not likely to meet this burden. *Cf. Dehainaut,* 32 F.3d at 1071-72; *Coopservir,* slip op. at 11 ("[T]he Notice 'reasonably can be said to further nonpunitive legislative purposes,' namely protection of national interests....") (citation omitted).

Third, in determining whether legislation constitutes "punishment," the Supreme Court has narrowly construed this to require "unmistakable evidence of punitive intent" in the legislative history before an enactment may be invalidated on this basis. *Selective Service,* 468 U.S. at 855 n. 15, 104 S Ct. 3348 (quoting *Flemming v. Nestor,* 363 U.S. 603, 619, 80 S.Ct. 1367, 4 L.Ed.2d 1435 (1960)). Global Relief can point to nothing in the legislative history of IEEPA, the history of Executive Order 13224, or the history of the blocking notice that evinces any intent to punish it. *See Coopservir,* slip op. at 12. Moreover, at least one court has held that "[t]he mere publication of [a] name in the [OFAC] list did not evince an 'intent to punish.' *Paradissiotis,* 171 F.3d at 989.

For all of these reasons, the temporary blocking order and designation of Global Relief as an entity to be investigated for possible support of terrorism do not amount to "a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial." Moreover, two courts have rejected nearly identical bill of attainder claims arising out of other OFAC blocking orders pursuant to sanctions programs under the IEEPA. *See Paradissiotis,* 171 F.3d at 989; *Coopservir,* slip op. at 10-12. Therefore, we find that Global Relief is not likely to succeed in proving a violation of the Bill of Attainder Clause.

2. *Ex Post Facto Clause*

[11] Global Relief next claims that the USA Patriot Act, which amended IEEPA, is an ex post facto law. The Ex Post Facto Clause prohibits four types of laws: 1) laws that denominate an action as criminal even though the action was taken before the passing of the law and was innocent when taken; 2) laws that aggravate a crime or make it greater than it was when committed; 3) laws that change the punishment, and inflict a greater punishment, *801 than the law applied to the crime when committed; and 4) laws that alter the legal rules of evidence and receive less, or different, testimony than the law required at the time of the commission of the offense in order to convict the offender. *Carmell v. Texas,* 529 U.S. 513, 521-22, 120 S.Ct. 1620, 146 L.Ed.2d 577 (2000).

[12] In determining whether legislation violates the Ex Post Facto Clause, courts use a three-pronged test. In order to violate the Ex Post Facto Clause: 1) the legislation must be penal or criminal in nature; 2) the legislation must be retrospective; and 3) the legislation must

"disadvantage the offender affected by it." *United States v. Couch,* 28 F.3d 711, 713 (7th Cir.1994), *cert. denied,* 513 U.S. 993, 115 S.Ct. 495, 130 L.Ed.2d 405 (1994) (citations omitted).

[13] In this case, the USA Patriot Act's amendments to IEEPA do not satisfy the first two prongs of the test. First, the modifications to IEEPA are not penal or criminal in nature, and the Ex Post Facto Clause only applies to criminal laws. *See Collins v. Youngblood,* 497 U.S. 37, 41, 110 S.Ct. 2715, 111 L.Ed.2d 30 (1990); *Flores-Leon v. INS,* 272 F.3d 433, 440 (7th Cir.2001). The USA Patriot Act made six changes to IEEPA. Only two changes are relevant to this case. One provision now explicitly permits the President and his designees to block assets of entities "during the pendency of an investigation." Pub.L. No 107-56, §§ 106, 115 Stat.272, 277. Another provision authorizes the Executive Branch to submit an agency record containing classified information "ex parte and in camera" for judicial review. *Id.* at 278. Neither provision is penal or criminal in nature. *Cf. United States v. Arch Trading Co.,* 987 F.2d 1087, 1093-95 (4th Cir.1993).

Moreover, the recent changes to IEEPA were intended to help address the national emergency concerning the terrorist attacks on September 11 and the threat of future attacks--they were not intended to punish Global Relief. Contrary to Global Relief's assertions, the defendants' temporary seizure and blocking of Global Relief's assets do not constitute a forfeiture or an unauthorized punishment. *Cf. Gilbert v. Peters,* 55 F.3d 237, 238 (7th Cir.1995) ("Although 'criteria for determining whether or not legislation is punitive have yet to be fully developed,' one significant factor for consideration is the legislation's purpose.") (citation omitted). For all of these reasons, the USA Patriot Act's amendments to IEEPA are not penal or criminal in nature and do not satisfy the first prong of the test.

Second, even if the USA Patriot Act's amendments to IEEPA could be construed as penal or criminal in nature, the Ex Post Facto Clause still would not apply because the amendments are not retrospective. *See Weaver v. Graham,* 450 U.S. 24, 29, 101 S.Ct. 960, 67 L.Ed.2d 17 (1981); *United States v. Szarwark,* 168 F.3d 993, 998 (7th Cir.1999). The USA Patriot Act was passed in October 2001, over a month before the FBI removed Global Relief's records and property and OFAC issued a blocking notice temporarily freezing Global Relief's assets. Therefore, the legislation is not retrospective.

Finally, contrary to Global Relief's claims, the USA Patriot Act is *not* "unquestionably a law 'that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offense, in order to convict the offender.' " *Carmell,* 529 U.S. at 530, 120 S.Ct. 1620. The USA Patriot Act's amendments to IEEPA do not change the sufficiency of evidence needed to obtain a criminal conviction. The actions being contested here--the seizing of records and the temporary *802 blocking of assets during an investigation--are not criminal penalties.

In sum, because the USA Patriot Act's changes to IEEPA are neither penal nor retrospective in nature, nor do they change the rules of evidence necessary to obtain a criminal conviction, Global Relief is not likely to succeed on its ex post facto claim.

3. *Taking Without Just Compensation*

The Takings Clause of the Fifth Amendment forbids the government from taking private property for public use without just compensation. Global Relief claims that defendants' seizure of its assets and the

temporary blocking order effects an uncompensated taking. This argument is incorrect for two reasons.

[14] First, a person claiming an uncompensated taking resulting from an action taken pursuant to IEEPA must typically bring a claim for monetary relief under the Tucker Act, 28 U.S.C. §§ 1491, in the Court of Federal Claims. *Dames & Moore,* 453 U.S. at 688-90, 101 S.Ct. 2972. *See also* 28 U.S.C. §§ 1346(a)(2); *Paradissiotis,* 171 F.3d at 989 (noting that "the Court of Federal Claims has exclusive jurisdiction for all claims for monetary relief against the United States greater than $10,000"). Accordingly, this claim is filed in the wrong court.

[15] In addition, even if this Court had jurisdiction, Global Relief's takings claim would fail. Takings claims have often been raised--and consistently rejected--in the IEEPA context. Many courts have recognized that a temporary blocking of assets does not constitute a taking because it is a temporary action and not a vesting of property in the United States. *See, e.g., Tran Qui Than v. Regan,* 658 F.2d 1296, 1304 (9th Cir.1981); *Miranda,* 766 F.2d at 5. As the *Tran Qui Than* court held, "[w]e recognize that blocking involves a deprivation of the enjoyment of a property interest. That deprivation is temporary, however, and is not equivalent to vesting." *Tran Qui Than,* 658 F.2d at 1304.

For all of these reasons, Global Relief is not likely to succeed in proving a violation of the Fifth Amendment's Takings Clause.

4. *The Executive Order is Not Unconstitutionally Vague*

[16] Global Relief next argues that Executive Order 13224 is unconstitutionally vague because it neither defines "associated with" nor

gives sufficient notice of the type of conduct which is prohibited. As stated earlier, the Executive Order allows OFAC to freeze an entity's assets if it is determined by the President, or those persons delegated by the President, that the person acted for, sponsored, or was otherwise associated with a person determined to be a terrorist.

We find that this argument lacks merit because this claim is not yet ripe for review. In this case, OFAC blocked Global Relief's assets pending investigation to determine if further blocking or designation should take place under one or more criteria of the Executive Order. There has not yet been any determination under the Executive Order as to whether designation or further blocking should take place. Thus, Global Relief's challenge is not ripe for review. *See Freedom to Travel Campaign v. Newcomb,* 82 F.3d 1431, 1441 (9th Cir.1996); *American-Arab Anti-Discrimination Comm. v. Thornburgh,* 970 F.2d 501, 511 (9th Cir.1991) ("Even in the case of a pre-enforcement challenge such as this, the exercise of jurisdiction without proper factual development is inappropriate."); *Western Mining Council v. Watt,* 643 F.2d 618, 627 (9th Cir.1981) ("The mere possibility that [an official] may act in an arguably unconstitutional manner... is insufficient to establish the 'real and substantial *803 controversy' required to render a case justiciable under Article III").

Therefore, Global Relief cannot establish a likelihood of success on its claim that the Executive Order is unconstitutionally vague.

5. *Due Process*

The Due Process Clause of the Fifth Amendment provides that "[n]o person shall ... be deprived of life, liberty, or property, without due

process of law." Global Relief argues that defendants are violating its right to due process by temporarily blocking Global Relief from its property and business without any judicial oversight.

i) *Pre-Deprivation Procedures*

The due process clause generally requires the government to afford notice and a meaningful opportunity to be heard before depriving a person of certain property interests. *See United States v. James Daniel Good Real Property,* 510 U.S. 43, 62, 114 S.Ct. 492, 126 L.Ed.2d 490 (1993). However, when exigent circumstances are present and the government demonstrates a "pressing need for prompt action," the Supreme Court has long struck the procedural due process balance so as to dispense with the requirement for a pre-deprivation hearing. *James Daniel Good,* 510 U.S. at 56, 114 S.Ct. 492; *Calero-Toledo v. Pearson Yacht Leasing Co.,* 416 U.S. 663, 679, 94 S.Ct. 2080, 40 L.Ed.2d 452 (1974). "It is by now well established that due process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances ... [W]here a State must act quickly, or where it would be impractical to provide predeprivation process, postdeprivation process satisfies the requirements of the Due Process Clause." *Gilbert v. Homar,* 520 U.S. 924, 930, 117 S.Ct. 1807, 138 L.Ed.2d 120 (1997) (citations and internal quotations omitted).

In *Calero-Toledo,* the Supreme Court upheld a statute that permitted seizure of assets without pre-deprivation process because "[t]he considerations that justified postponement of notice and hearing in [prior] cases are present here":

First, seizure under the [applicable] statutes serves significant

governmental purposes .... Second, preseizure notice and hearing might frustrate the interests served by the statutes, since the property seized ... will often be of a sort that could be removed to another jurisdiction, destroyed, or concealed, if advance warning of confiscation were given. And finally, ... seizure is not initiated by selfinterested private parties; rather, [government] officials determine whether seizure is appropriate under the provisions of the... statutes. In these circumstances, we hold that this case presents an 'extraordinary' situation in which postponement of notice and hearing until after seizure did not deny due process.

Id. at 679-80, 94 S.Ct. 2080 (citing *Fuentes v. Shevin,* 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972)). *See also Federal Deposit Ins. Corp. v. Mallen,* 486 U.S. 230, 240-41, 108 S.Ct. 1780, 100 L.Ed.2d 265 (1988).

Due to the exigencies of national security and foreign policy considerations, the Executive Branch historically has not provided pre-deprivation notice in sanctions programs under IEEPA. The actions taken by the Executive Branch pursuant to these statutes are procedurally and substantively different from other types of governmental conduct in that they first require a declaration of war or national emergency arising, at least in substantial part, outside the United States. *See* 50 U.S.C. §§§§ 1701-02, app. §§ 5(b). Because of the Executive's need for speed in these matters, and the need to prevent the flight *804 of assets and destruction of records, the President and his designees cannot provide pre-deprivation notice under these circumstances. *See Haig,* 453 U.S. at 307, 101 S.Ct. 2766 ("no governmental interest is more important than the security of the Nation"); *Palestine Information Office v. Shultz,* 853 F.2d 932, 942-43 (D.C.Cir.1988).

Pre-deprivation notice would, in fact, be antithetical to the objectives of these sanctions programs, and. as a result, it is OFAC policy when initiating a blocking pursuant to IEEPA not to provide pre-blocking notice. (Newcomb Decl. ¶¶ 11-12.) Summary process in these circumstances simply maintains the status quo, protects against transfer or dissipation of assets subject to the blocking order, and furthers the compelling government interest in promoting its declared national security and foreign policy goals.

In fact, courts repeatedly have held that orders issued without pre-blocking notice in these types of cases do not violate the Due Process Clause. *See, e.g., Milena,* 995 F.2d at 624 ("OFAC had to act quickly following the issuance of the Executive Orders; delay would have allowed the assets to leave the United States, thereby thwarting the purpose of the Orders."); *IPT Co. v. United States Dep't of Treasury,* 1994 WL 613371, at *6 (S.D.N.Y. Nov.4, 1994) (holding that pre-deprivation notice and hearing was not required in connection with an OFAC blocking order).

[17] For all of the foregoing reasons, we find that Global Relief is not likely to succeed in proving its claim that defendants violated Global Relief's due process rights by failing to provide notice and a meaningful opportunity to be heard prior to temporarily blocking Global Relief's assets.

ii) *Post-Deprivation Procedures*

[18] Global Relief also contends that defendants' post-blocking procedures violate the Due Process Clause. However, we find that Global Relief is not likely to succeed on this claim because it chose not to utilize many of the available administrative remedies and, when it did

opt to use the OFAC process for obtaining licenses, it did not act promptly.

OFAC provided Global Relief with a variety of post-blocking options which satisfied its due process obligations. First, OFAC delivered a notice to Global Relief on the day of the temporary blocking that informed it that OFAC believed that Global Relief "may be engaged in activities that violate IEEPA." The notice delineated Global Relief's right to present evidence and/or argument to OFAC if it believed the blocking was made in error, including the right to make submissions by facsimile "to expedite" OFAC's response. The notice also informed Global Relief of OFAC's "licensing authority to help ameliorate the effects of the blocking" of Global Relief's funds and accounts. Through the licensing authority, Global Relief could obtain funds to pay salaries, rent, utility payments, and attorneys fees. The notice also referred Global Relief to relevant agency regulations and provided it with an agency contact and phone number in case any questions arose.

Despite OFAC's notification to Global Relief of its right to submit evidence and argument if it believed the blocking was in error, Global Relief has never availed itself of this opportunity in the almost six months since the temporary blocking order was issued. Global Relief speculates that such an administrative challenge would have been "window dressing," because the "very person who is responsible for prosecuting" Global Relief (the Director of OFAC) would have received the evidence.

*805 Contrary to Global Relief's assertions, the director of OFAC is an appropriate person to consider administrative appeals. *Withrow v. Larkin,* 421 U.S. 35, 56, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975). In

Larkin, the Supreme Court held that it is:

very typical for the members of administrative agencies to receive the results of investigations, to approve the filing of charges or formal complaints instituting enforcement proceedings, and then to participate in the ensuing hearings. This mode of procedure does not violate the Administrative Procedure Act, and it does not violate due process of law.

Id. at 56, 95 S.Ct. 1456. In fact, in other cases, the OFAC director has revoked blocking orders based upon new information provided by a designated party. That Global Relief opted to ignore its administrative due process rights and choose instead to file this case cannot be considered a constitutional violation on the part of defendants.

Second, as part of its due process obligations, the agency also provided an administrative mechanism to Global Relief to allow it to request licenses for payment of certain expenses. During the past four months, OFAC has issued licenses to Global Relief to allow for payment of legal fees, establishment of a legal defense fund, payment of obligations outstanding as of the date of the temporary blocking, and payment of certain continuing expenses. These licenses have allowed Global Relief to maintain some of its operations during the pendency of the investigation. Although Global Relief complains that OFAC is causing it great hardship, it should be noted that Global Relief waited over a month from the time the agency asked it to submit a proposed operating budget until it did so.

Finally, Global Relief claims that OFAC has denied it due process by

not giving it access to its own documents seized on December 14, 2001 and by not providing it with classified documents used to support the temporary blocking action. First, the issue of Global Relief being denied access to its own documents has been addressed by the Court and defendants have been returning documents to Global Relief on an on-going basis.

Moreover, we do not believe that defendants have created a due process violation by denying Global Relief access to classified documents. When, as here, Congress and the President have determined a need for the secrecy of government information, courts have rejected challenges to the *ex parte* use of a classified record. *See, e.g., National Council of Resistance of Iran v. Dep't of State,* 251 F.3d 192, 196 (D.C.Cir.2001) ("The Secretary may base his findings on classified material, to which the organization has no access at any point during or after the proceeding to designate it as a terrorist.").

For these reasons, we find that Global Relief will not likely succeed in proving a due process violation regarding defendants' post-blocking procedures.

6. *First Amendment*

[19] Global Relief next argues that defendants have violated the First Amendment. The First Amendment provides that "Congress shall make no law... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble...." Global Relief raises two First Amendment arguments to challenge the defendants' actions. First, Global Relief argues that the Executive Order is unconstitutionally overbroad. Second, Global Relief argues that, as applied to United States persons, the Executive Order violates the First Amendment. We

find that Global Relief is unlikely to prevail on these arguments.

*806 First, the Executive Order empowers OFAC to freeze an entity's assets if it is determined that the person acted for, sponsored, or was otherwise associated with a person determined to be a terrorist. Although its argument is vague, Global Relief appears to argue that the Executive Order violates the First Amendment because it is overbroad in that it does not define the term "associated with."

However, because the Executive Order neither "*directly* regulates speech or expression arguably protected by the First Amendment" nor grants "discretion to a delegatee to determine whether particular items of expression may be prohibited on the basis of their content," the question of overbreadth does not arise. *Veterans & Reservists for Peace in Vietnam v. Regional Comm'r of Customs, Region II,* 459 F.2d 676, 681 (3d Cir.1972). To prevent additional terrorist attacks, the Executive Order governs financial arrangements and other types of support; its effects on speech, if any, are incidental. Consequently, it does not "burden substantially more speech than is necessary to further the government's legitimate interests." *Ward v. Rock Against Racism,* 491 U.S. 781, 799, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989).

Moreover, "when 'speech' and 'nonspeech' elements are combined in the same course of conduct, a sufficiently important government interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms." *United States v. O'Brien,* 391 U.S. 367, 376-77, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968). The *O'Brien* court held that:

a government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

Id. at 376-77, 88 S.Ct. 1673.

In this case, the Executive Order clearly meets these requirements. First, the President clearly had the power to issue the Executive Order. Second, the Executive Order promotes an important and substantial government interest--that of preventing terrorist attacks. Third, the government's action is unrelated to the suppression of free expression; it prohibits the provision of financial and other support to terrorists. Fourth, the incidental restrictions on First Amendment freedoms are no greater than necessary. *See Humanitarian Law Project v. Reno,* 205 F.3d 1130, 1135-36 (9th Cir.2000); *Palestine Info. Office,* 853 F.2d at 939-40; *cf. Walsh v. Brady,* 927 F.2d 1229, 1234-35 (D.C.Cir.1991). Therefore, it is unlikely that the Executive Order, as applied to United States citizens, violates the First

Amendment. For all of these reasons, we find that Global Relief is unlikely to prevail in proving that defendants' actions violate the First Amendment.

7. *Eighth Amendment*

Global Relief next argues that the government has instituted a civil forfeiture in violation of the Eighth Amendment's prohibition on excessive fines. Before a court can conclude that a fine is excessive under the Eighth Amendment, it must first determine that a fine was in fact paid to the government. The constitutional prohibition concerning

excessive fines "was intended to limit only those fines directly imposed by, and payable to, the government." *Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 268, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989).

In this case, Global Relief has failed to show the existence of any such fine. Global Relief has not been required to make any sort of payment in cash, or in kind, to the government. Although Global Relief's funds are held in temporarily blocked accounts, the government has not collected or received any of these funds. Despite Global Relief's assertions, OFAC's blocking notice does not constitute a forfeiture of Plaintiff's property.

For these reasons, we find that it is unlikely that Global Relief will succeed in proving that a civil forfeiture has occurred.

8. *Separation Of Powers*

Relief next argues that IEEPA violates the separation of powers. Specifically, Global Relief argues that Congress cannot delegate carte blanche to the President. Moreover, Global Relief claims that "OFAC's approach combines lawmaker, investigator, prosecutor, fact finder and jailer or executioner into a single office, indeed a single person; this is not a permissible combination of functions, even where administrative process is sufficient."Global Relief is not likely to succeed on these claims. First, IEEPA grants the President certain emergency powers. The President has inherent Article II powers as commander in chief. The President has delegated his statutory power under IEEPA to OFAC. Pursuant to this authority, OFAC is granted certain powers to investigate, issue blocking orders, and provide certain remedies. Many agencies operate under similar circumstances. Therefore, the provisions

of IEEPA and its delegation of authority to OFAC is not likely to violate the separation of powers.

9. *Fourth Amendment*

Relief next argues that defendants unconstitutionally searched its offices and seized its property in violation of the Fourth Amendment. The Fourth Amendment provides that "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

We reject Global Relief's argument because FISA's safeguards provide sufficient protection for the rights guaranteed by the Fourth Amendment in the context of foreign intelligence activities. We agree with the many courts which have held that searches conducted pursuant to FISA do not violate the protections afforded by the Fourth Amendment. *See, e.g., United States v. Pelton,* 835 F.2d 1067, 1075 (4th Cir.1987); *United States v. Cavanagh,* 807 F.2d 787, 790-92 (9th Cir.1987); *United States v. Duggan,* 743 F.2d 59, 73 (2d Cir.1984). For these reasons it is unlikely that Global Relief will succeed in proving a violation of the Fourth Amendment.

10. *Fifth And Sixth Amendments*

Finally, Global Relief claims that it has been deprived of its rights under the Fifth and Sixth Amendments because it is being required to answer for a capital, or otherwise infamous crime, without presentment or indictment of a Grand Jury. Additionally, Global Relief argues that it has

been deprived of the right to a speedy and public trial, an impartial jury, notice of the charges, an opportunity to confront witnesses and a compulsory process for obtaining witnesses.

Global Relief's conclusory assertions, however, rely on a false predicate-- that Global Relief is facing criminal sanctions. In this case, Global Relief is not being "held to answer for a capital, or otherwise infamous crime." U.S. Const. amend. V. *808 It also does not currently face a "criminal prosecution[ ]." U.S. Const. amend. VI. Consequently, the protections afforded by these amendments do not apply to Global Relief.

For these reasons, it is unlikely that Global Relief will succeed in proving a violation of the Fifth and Sixth Amendments.

11. *Ex Parte, In Camera Submission*

Finally, Global Relief also argues that the defendants' submission of *ex parte, in camera* documents violates Global Relief's constitutional rights. While it is unclear exactly which provisions of the Constitution Global Relief claims that the *ex parte, in camera* submission violates, Global Relief appears to argue that its right to confront witnesses and its due process rights have been violated by this submission.

The Confrontation Clause of the Sixth Amendment guarantees a defendant in a criminal prosecution the right to confront the witnesses against him. *Davis v. Alaska,* 415 U.S. 308, 315-16, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974). However, as we have previously stated, the Sixth Amendment is inapplicable because Global Relief is not facing criminal sanctions and is not being charged in a criminal prosecution. Consequently, the protections afforded by the Confrontation Clause of

the Sixth Amendment do not apply in this case.

Moreover, we do not believe that the *ex parte, in camera* submission violates Global Relief's due process rights. *Ex parte, in camera* proceedings are extraordinary events in the constitutional framework because they deprive the parties against whom they are directed of the root requirements of due process--notice setting forth the alleged misconduct and an opportunity for a hearing. *See Wolff v. McDonnell,* 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). Review of *ex parte, in camera* submissions can only be justified by compelling state interests. *See United States v. Bell,* 464 F.2d 667 (2d Cir.), *cert. denied,* 409 U.S. 991, 93 S.Ct. 335, 34 L.Ed.2d 258 (1972). Thus, the nature of the government's interest must be balanced against the private party's interest to determine if a due process violation has occurred.

In this case, the defendants have demonstrated that it would harm the national security of the United States to disclose, while the government's investigation is pending, the materials submitted *ex parte and in camera.* Moreover, the defendants disclosed as much of the material as it could divulge without compromising its investigation and the national security by publicly filing four binders of exhibits on March 27, 2002. Although Global Relief does have a substantial interest in being able to study and respond to the evidence against it, we find that the defendants have demonstrated a compelling state interest in national security which outweighs Global Relief's interest in this case. This is especially true because this case involves a freeze of funds and examination of seized potential evidence to aid an investigation. This case is not a criminal prosecution nor is it a permanent forfeiture of assets. Thus, we find that it is unlikely that Global Relief will succeed on

the merits of its due process claim regarding the defendants' use of *ex parte, in camera* documents.

12. *Summary*

In the second part of its motion for a preliminary injunction, Global Relief argues that there is a likelihood that it would succeed in proving that the defendants violated the Constitution. Specifically, Global Relief argues that defendants have violated the Bill of Attainder Clause, the Ex Post Facto Clause, the Fifth Amendment's Takings Clause, the Due Process *809 Clause, the First, Fourth, Fifth, Sixth and Eighth Amendments to the Constitution. In addition, Global Relief argues that Executive Order 13224 is unconstitutionally vague and that IEEPA violates the separation of powers.

As discussed in significant detail above, we find that these arguments are not likely to succeed on their merits. Therefore, we find that Global Relief is not likely to succeed in proving a violation of its constitutional rights. Coupled with its failure to demonstrate that it is likely to succeed on its statutory claims, Global Relief has failed to satisfy the likelihood of success threshold factor for preliminary injunctive relief.

Accordingly, "[i]f a plaintiff fails to meet just one of the prerequisites for a preliminary injunction, the injunction must be denied." *Cox v. City of Chicago*, 868 F.2d 217, 223 (7th Cir.1989) (citing *Shaffer v. Globe Protection, Inc.*, 721 F.2d 1121, 1123 (7th Cir.1983)). In this case, Global Relief has not proven a reasonable likelihood of success on the merits of its statutory and constitutional claims. Because Global Relief is unable to demonstrate a likelihood of success on the merits, it is not necessary to examine the other elements for preliminary injunctive

relief.

CONCLUSION

For the foregoing reasons, we deny the motion of Global Relief Foundation, Inc. for injunctive relief.

APPENDIX D

Order Denying Emergency Petition

for a Writ of Mandamus

4/12/02

1724-02

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted April 10, 2002
Decided April 11, 2002

Before

Hon. RICHARD A. POSNER, Circuit Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

Hon. DIANE P. WOOD, Circuit Judge

IN RE:	] Petition for
GLOBAL RELIEF FOUNDATION, INCORPORATED, Petitioner.	] Writ of Mandamus] Northern District of] Illinois, Eastern Division.
	]
No. 02-1874	] No. 02 C 674
	]
	] Wayne R. Andersen,] Judge.

Upon consideration of the **EMERGENCY PETITION FOR A WRIT OF MANDAMUS**, filed on April 10, 2002, by counsel for the petitioner,

IT IS ORDERED that the petition is **DENIED**. The district court order at issue is fully reviewable on appeal.

APPENDIX E

Order Denying Emergency Motion

for Temporary Restraining Order and Preliminary Injunction

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted April 10, 2002
Decided April 11, 2002

Before

Hon. RICHARD A. POSNER, Circuit Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

Hon. DIANE P. WOOD, Circuit Judge

GLOBAL RELIEF FOUNDATION, INCORPORATED, Plaintiff-Appellant,	] Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 02-1869 v.	] No. 02 C 674
PAUL H. O'NEILL, Secretary of Treasury, COLIN L. POWELL, Secretary, Secretary of State, JOHN D. ASHCROFT, Attorney General, et al., Defendants-Appellees.	] Wayne R. Andersen, Judge.

The following is before the court: **EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**, filed on April 10, 2002, by counsel for the appellant.

IT IS ORDERED that this appeal is **DISMISSED** for lack of jurisdiction. The district court order from which the appellant seeks to appeal is only an evidentiary ruling, and is not the grant or denial of a preliminary injunction or a collateral order from which an interlocutory appeal is permitted.

APPENDIX F

Global Relief Foundation, Inc. v. O'Neill,

205 F.Supp.2d 885 (N.D.Ill. 2002)

United Sates District Court,

N.D. Illinois,

Eastern Division.

GLOBAL RELIEF FOUNDATION, INC., Plaintiff.

v.

Paul H. O'NEILL, Colin L. Powell, John Ashcroft, R. Richard Newcomb, and Robert S. Mueller, III, Defendants.

No. 02 C 674.

April 5, 2002.

Non-profit corporation filed motion for a preliminary injunction to "unfreeze" money blocked by government as well as order government to return documents and other materials obtained in government's search of non-profit corporation's offices pursuant to Executive Order instructing federal agencies to utilize all legal means to stem the flow of money supporting terrorist organizations. Upon the emergency motion of non-profit corporation to preclude ex parte, in camera proceedings, the District Court, Andersen, J., held that it was appropriate for court to review and examine proposed in camera submission of material supporting government's opposition to the motion for preliminary injunction.

Motion denied.

When deciding non-profit corporation's motion for a preliminary injunction to "unfreeze" money blocked by government as well as order government to return documents and other materials obtained in government's search of non-profit corporation's offices pursuant to Executive Order instructing federal agencies to utilize all legal means to stem the flow of money supporting terrorist organizations, it was appropriate for court to review and examine proposed in camera submission of material supporting government's opposition to the motion; proper evaluation of non-profit corporation's challenges to the government's actions required a review of all the available submissions, whether publicly disseminated or in camera and ex parte. Emergency Economic Powers Act, § 203(a)(1)(B), 50 U.S.C.A. § 1702(a)(1)(B).

***885** Thomas Anthony Durkin, Durkin & Roberts, Chicago, IL, Roger C. Simons, Victor E. Cretella, III, Matthew H. Simmons, Shawn P. Cavenee, Gordon & Simmons, Frederick, MD, for Plaintiff.

Thomas P. Walsh, United States Attorney's Office, Chicago, IL, John E. Smith, U.S. Department of Justice, Civil Division, Federal Programs Branch, Washington, DC, for Defendants.

MEMORANDUM OPINION AND ORDER

ANDERSEN, District Judge.

This case is before the Court on the emergency motion of the plaintiff, Global Relief Foundation, Inc., to preclude *ex parte, in camera* proceedings

before this Court. For the following reasons, the plaintiff's motion is denied.

BACKGROUND

In response to the attacks on September 11, 2001, President George W. Bush declared a national emergency on September 24, 2001 with respect to the "grave acts of terrorism and threats of terrorism committed by foreign terrorists ... and the immediate threat of further attacks on United States nationals or the United States." Exec. Order No. 13224, 66 Fed.Reg. 49074 (Sep. 24, 2001). Due to the "pervasiveness and expansiveness of the financial foundation*886 of foreign terrorists," the Executive Order instructed the executive agencies of the United States to utilize all legal means to stem the flow of money supporting terrorist organizations throughout the world.

Global Relief Foundation, Inc. ("Global Relief") is a domestic, non-profit corporation chartered and headquartered in Illinois. On December 14, 2001, the Department of the Treasury's Office of Foreign Assets Control ("OFAC"), pursuant to the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. § 1701 *et seq.*, and the President's Executive Order, issued a "Blocking Notice and Requirement to Furnish Information." The notice blocked the funds, accounts and business records in which Global Relief had an interest, pending further investigation.

According to the defendants, on December 14, 2001, agents from the Federal Bureau of Investigation ("FBI") conducted a search of the offices of Global

Relief and a search of the home of its executive director, Mohammed Chehade, pursuant to the terms of the Foreign Intelligence Surveillance Act, 50 U.S.C. §§ 1821--1829. During these searches, the FBI collected records, video equipment, financial literature, promotional books, tapes, e-mail, and computers.

On January 28, 2002, Global Relief filed its Petition for Declaratory and Injunctive Relief and for a Writ of Mandamus. In that petition, Global Relief seeks a judgment which would "unfreeze" money blocked by the defendants as well as order the defendants to return documents and other materials recovered during the search of Global Relief's offices. On February 12, 2002, Global Relief filed its Motion for Preliminary Injunction arguing that the block of its assets and records was illegal and unconstitutional.

On March 8, 2002, in preparation for the filing of a response to the Global Relief's motion for a preliminary injunction, counsel for the defendants sent a letter to the Court. In that letter, defendants requested permission to suggest to the Court, *in camera* and *ex parte* (in the judge's chambers with only one party present), the procedures under which the Court should consider the proposed *in camera* submission supporting the defendants' opposition to the Global Relief's motion. Global Relief objected to this meeting, which took place on March 14, 2002. Global Relief then filed the motion before the Court today.

In its motion, Global Relief maintains that the

letter, the meeting that ensued, and the forthcoming court review of *in camera* submissions violate this Court's normal procedures, and, more importantly, that an *ex parte, in camera* consideration of the defendants' submissions is illegal and unconstitutional. Indeed, Global Relief characterized the proposed review as "Orwellian" and argues that it violates at least ten constitutional principles. Global Relief asserts that this Court should neither review nor consider any of the proposed *in camera* submissions until it has first decided the validity of Global Relief's legal challenges to the actions of the defendants. Due, however, to the extraordinary circumstances alleged by the defendants, this Court, for the reasons stated below, respectfully declines to grant the motion of Global Relief.

DISCUSSION

The defendants rely upon the IEEPA as the statutory basis for their decision to block the financial assets of Global Relief. The IEEPA allows the President of the United States to "block during the pendency of an investigation ... any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States." ***88**750 U.S.C. § 1702(a)(1)(B). Any judicial review of the defendants' decision to block Global Relief's property under this statute is necessarily fact intensive. For example, this Court may not be able to determine whether any "foreign country or national thereof" had an "interest" in Global Relief without first reviewing the proposed *in-camera* submission.

Accordingly, a proper evaluation of Global Relief's challenges to the defendants' actions in this case requires a review of *all* the available submissions, whether publicly disseminated or *in camera* and *ex parte*. Our review of the proposed *in camera* submission does not presuppose that the Court will rely on that submission when ultimately ruling on Global Relief's motion for a preliminary injunction. A court cannot determine if proposed evidence is admissible and probative without first examining it.

Our conclusion with respect to the review of the proposed *in camera* submissions is supported by *Abourezk v. Reagan*, 785 F.2d 1043 (D.C.Cir.1986), *aff'd*, 484 U.S. 1, 108 S.Ct. 252, 98 L.Ed.2d 1 (1987). *See also Patterson v. Federal Bureau of Investigation*, 893 F.2d 595, 599-600 (3d Cir.), *cert. denied*, 498 U.S. 812, 111 S.Ct. 48, 112 L.Ed.2d 24 (1990); *United States v. Ott*, 827 F.2d 473, 475 (9th Cir.1987); *United States v. Belfield*, 692 F.2d 141, 147 (D.C.Cir.1982); and *United States v. Nicholson*, 955 F.Supp. 588, 592 (E.D.Va.1997). In *Abourezk*, suits challenged the refusal of the Secretary of State to issue visas to aliens whom the plaintiffs had invited to come to the United States to speak on issues of public concern. The court addressed the proper standards that should apply when a court is asked to review *in camera* and *ex parte* submissions. While noting that, as a general rule, "a court may not dispose of the merits of a case on the basis of *ex parte, in camera* submissions," the court recognized that, in "extraordinary circumstances," it may be necessary for a district court to review and rely on certain evidence *in camera* and *ex parte*. *Id.* at 1061. One such circumstance recognized by the court is the assertion of the "state secrets

privilege" by the government when "acute national security concerns" are involved. *Id.* In that situation, the court held that review of *in camera* and *ex parte* submissions was only appropriate when: a) the government demonstrated "compelling national security concerns;" and b) the government publicly disclosed, prior to any *in camera* inspection, as much of the material as it could divulge without compromising the privilege. *Id.* (citing *Molerio v. Federal Bureau of Investigation,* 749 F.2d 815 (D.C.Cir.1984)).

In this case, the defendants have acted in accordance with the rationale espoused in *Abourezk*. On March 27, 2002, the Attorney General of the United States filed a declaration in which he stated that "it would harm the national security of the United States to disclose or have an adversary hearing with respect to materials submitted to the [United States Foreign Intelligence Surveillance Court] in connection with this matter." (Ashcroft Declaration at ¶ 3.) The defendants claim to have satisfied the second prong of the *Abourezk* rationale by publicly filing on March 27, 2002 four binders of exhibits to support their arguments in opposition to the motion for a preliminary injunction. Therefore, in light of the standards enunciated in *Abourezk,* it is appropriate for the Court in this case to review and examine the proposed *in camera* submission of the defendants when deciding Global Relief's motion for a preliminary injunction.

CONCLUSION

For the foregoing reasons, the plaintiff's emergency

motion to preclude *ex parte, in* ****888*** *camera* proceedings is denied. Accordingly, this Court will begin its review of the proposed *in camera* submissions to facilitate its consideration of Global Relief's motion for a preliminary injunction.

APPENDIX G

Treas. SDGT Designation

and "Findings of Fact"

(0) (RCS) VEC SPC

Rob Nichols
Deputy Assistant Secretary for Public Affairs
U.S. Department of the Treasury
202-622-2910

FOR IMMEDIATE RELEASE CONTACT: Rob Nichols
Friday, October 18, 2002
202-622-2910

TREASURY DEPARTMENT STATEMENT REGARDING THE DESIGNATION OF THE GLOBAL RELIEF FOUNDATION

We continue to wage our relentless war on terror ? both here in the U.S. and overseas. We are harvesting information, coordinating with our allies, and taking action against terrorist networks. We are seeing progress. We have frozen dollars and the assets of organizations, deterred donors and supporters, and forced terrorist backers to use riskier, more vulnerable methods of raising and moving money.

Our efforts are having real-world effects. Al-Qaida and other terrorist organizations are suffering financially as a result of our actions. Potential donors are being more cautious about giving money to organizations where they fear that the money might wind up in the hands of terrorists. In addition, greater regulatory scrutiny in financial systems around the world is further marginalizing those who would support terrorist groups and activities.

The war on terrorism is only beginning, and it is certain to demand constant vigilance. In the year since that terrible day, we have hit them hard. Our goal is to bankrupt their

institutions and beggar the bombers. This war - the financial war against terrorism ? is complicated and much more remains to be done. We are off to a good start, but this is a long-term war of attrition that we are waging. We will not relent.

As part of this campaign, today the Treasury Department designated the Global Relief Foundation under the authority of Executive Order 13224.

The Global Relief Foundation (GRF), has connections to, has provided support for, and has provided assistance to Usama Bin Ladin, the al Qaida Network, and other known terrorist groups.

One of the founders of GRF was previously a member of the Makhtab Al-Khidamat, the precursor organization to al Qaida. The GRF has received funding from individuals associated with al Qaida. GRF officials have had extensive contacts with a close associate of Usama Bin Ladin, who has been convicted in a U.S. court for his role in the 1998 bombings of the U.S. embassies in Kenya and Tanzania

GRF members have dealt with officials of the Taliban, while the Taliban was subject to international sanctions.

The GRF has connections with known terrorist organizations and with known supporters of terrorist organizations, including the shipment of materiel to a terrorist organization operating in the Kashmir region and through financial transactions with a Texas-based charitable organization.

The United States today submitted this group's name to the UN sanctions committee for inclusion in its' consolidated list of entities and individuals whose assets UN member states are obligated to freeze pursuant to UN security council resolutions 1267 and 1390.

TREASURY DEPARTMENT FACT SHEET ON THE GLOBAL RELIEF FOUNDATION

The Global Relief Foundation (GRF), also known as Fondation Secours Mondial (FSM), and its officers and directors have connections to, and have provided support for and assistance to, Usama bin Ladin (UBL), al Qaida, and other known terrorist groups. These include groups previously designated by the United States under President Bush's September 2001 Executive Order 13224 regarding terrorism and included on the United Nations 1267 Sanctions Committee's consolidated list of individuals and entities whose assets are required to be frozen pursuant to UN Security Council Resolutions (UNSCRs) 1267 and 1390.

Links to UBL and al Qaida:

Rabih Haddad, a senior GRF official who co-founded GRF and served as its president throughout the 1990s and in the year 2000, worked for Makhtab al-Khidamat (MAK) in Pakistan in the early 1990s. MAK was co-founded by Sheikh Abdullah Azzam and UBL in the 1980s and served as the precursor organization to al Qaida. MAK was designated by President Bush in E.O. 13224 and was subsequently included on the UN 1267 Sanctions Committee's consolidated list. The organization has helped funnel fighters and money to the Afghan resistance in Peshawar, Pakistan, and established recruitment centers worldwide to fight the Soviets. Azzam, who served as a mentor to UBL, was killed in 1989. He is also regarded as a historical leader of HAMAS, which was designated under E.O. 13224. At a recent immigration hearing, Haddad conceded that he met Azzam in Pakistan and characterized him as a "hero."

In addition, GRF has provided financial and other assistance to, and received funding from, individuals connected with al Qaida. Mohamed Galeb Kalaje Zouaydi, a suspected financier of international terrorist efforts, was arrested in Europe in April 2002. GRF has [illegible] funds from Zouaydi. [illegible] $OUS [illegible]

GRF and FSH personnel had multiple contacts with Wadih El-Hage, UBL's personal secretary when UBL was in Sudan. El-Hage was convicted in a U.S. district court in May 2001, for his role in the UBL-directed 1998 bombings of the U.S. embassies in Kenya and Tanzania. At the time that El-Hage was playing an active role in an al Qaida terrorist cell in Kenya, he was in contact with GRF. For example, documents recovered from a search in Kenya indicated that El-Hage was in contact with GRF after he returned from visiting al Qaida leadership in Afghanistan in February 1997. GRF has acknowledged that El-Hage and Nabil Sayadi, FSH's Director in Belgium, were in contact during this period.

Links to Taliban and Other Entities and Backgrounds

A GRF employee also dealt with officials of the Taliban, which at the time was an entity subject to U.S. sanctions pursuant to United States E.O. 13129 (prohibiting trade and most transactions with the Taliban because it provided a safe haven and base of operations for UBL and al Qaida) and subject to international sanctions pursuant to UNSCRs 1267 and 1333. In November 2001, during the airstrikes in Afghanistan, a GRF medical relief coordinator traveled to Kabul, against the advice of the U.S. Department of State, and engaged in dealings and negotiations with Taliban officials until the collapse of the Taliban regime.

A set of photographs and negatives discovered in 1997 in a trash dumpster outside of GRF's office in Illinois depict large shipping boxes displayed under a GRF banner. The boxes were full of sophisticated communications equipment, including approximately 200 handheld radio transceivers, long-range radio antennas, and portable power packs, with an estimated total value of $121,000. Other photographs depict fighters armed with automatic rifles, a sandbagged bunker with a radio antenna mounted outside, and mutilated corpses with the name "KPI" (Kashmir Press International) printed alongside. Yet another photograph displays two dead men with the caption "Hizbul Mujahideen," a known terrorist organization operating in the Kashmir region. On the reverse side of the photograph was handwritten in Arabic, "two martyrs killed by the Indian government."

GRF has stocked and promoted audio tapes and books authored by Sheikh Abdullah Azzam, discussed above, which glorify armed jihad, including "The international conspiracy against Jihad" and "The Jihad in its present stage." Despite Azzam's terrorist background, GRF has enthusiastically promoted Azzam's materials to the public: "His [Azzam's] theology is a sea, his words are jewels, and his thoughts are a light for those who are holding the smoldering embers. He lived the Jihad experiences of the 20th century in Afghanistan . . . and Palestine, and produced a new theory for saving the [Islamic] Nation from disgrace, shame, weakness, and submission to others."

GRF has published several Arabic newsletters and pamphlets that advocate armed action through jihad against groups perceived to be un-Islamic. For example, one 1998 GRF pamphlet reads "God equated martyrdom through JIHAD with supplying funds for the JIHAD effort. All contributions should be mailed to: GRF." Another GRF newsletter requested donations "for God's cause ? they [the Zakat funds] are disbursed for equipping the raiders, for the purchase of ammunition and food, and for their [the Mujahideen's] transportation so that they can raise God the Almighty's word . . . it is likely that the most important of disbursement of Zakat in our times is on the jihad for

God's cause . . .

GRF received [redacted] from the Holy Land Foundation for Relief and Development (HLF) in 2000. HLF, a Richardson, Texas based Islamic charitable organization, was designated under E.O. 13224 on December 4, 2001, and under the European Union's Regulation (EC) No. 2580/2001 on June 27, 2002, for its ties to terrorism. HLF's designation was upheld in a recent decision by a U.S. district court.

-30-

[redacted]

[redacted]

GLOBAL 3618

A Notice from the Office of Foreign Assets Control - October 18, 2002

Global Relief Foundation, Inc. has now been officially listed as a "Specially Designated Global Terrorist" (SDGT).

The following entry has therefore been changed:

GLOBAL RELIEF FOUNDATION, INC., 9935 S. 76th Avenue, #1, Bridgeview, IL 60455, U.S.A.; P.O. Box 1406, Bridgeview, IL 60455, U.S.A.; U.S. FEIN: 36-3804626 (all financial assets and all records are blocked) [SPI-PA]

with the additional descriptor information below incorporated into the new GLOBAL RELIEF FOUNDATION, INC. (SDGT) designation:

Offices in the United States:

1) P.O. Box 1406, Bridgeview, IL 60455, U.S.A.

Foreign Offices:

FONDATION SECOURS MONDIAL A.S.B.L.
(a.k.a. FONDATION SECOURS MONDIAL þ BELGIQUE A.S.B.L.;
a.k.a. FONDATION SECOURS MONDIAL VZW;
a.k.a. FSM;
a.k.a. STICHTING WERELDHULP þ BELGIE, V.Z.W.;
a.k.a. SECOURS MONDIAL DE FRANCE
a.k.a. FONDATION SECOURS MONDIAL þ KOSOVA;
a.k.a. FONDATION SECOURS MONDIAL "WORLD RELIEF")

2) Vaatjesstraat, 29, 2580 Putte, Belgium

3) Rue des Bataves 69, 1040 Etterbeek, Brussels, Belgium

4) P.O. Box 8, 1040 Etterbeek 2, Brussels, Belgium

5) Mula Mustafe Baseskije Street No. 72, Sarajevo, Bosnia

6) Put Mladih Muslimana Street 30/A, Sarajevo, Bosnia

7) 29 rue Aspere, 67100 Strasbourg, France

8) Rr. Skenderbeu 76, Lagjja Sefa, Gjakova, Kosovo

9) Ylli Morina Road, Djakovica, Kosovo

10) Kruga e Kavajes, Building No. 3, Apartment No. 61, P.O. Box 1992, Tirana, Albania

11) House 267 Street No. 54, Sector F - 11/4, Islamabad, Pakistan

12) Saray Cad. No. 37 B Blok, Yesilyurt Apt. 2/4, Sirinevler, Turkey

Other Foreign Locations:

13) Afghanistan

14) Azerbaijan

15) Bangladesh

16) Chechnya (Russia)

17) Ch[redacted]

18) Eri[redacted]

19) Ethiopia

20) Georgia

21) India

22) Ingushetia (Russia)

23) Iraq

24) Jordan

25) Kashmir

26) Lebanon

27) Sierra Leone

28) Somalia

29) Syria

30) West Bank and Gaza

Federal Employer Identification Number: 36-3804626
T.A.T. Number: EE 454,419,759

All of OFAC's informational material has been updated accordingly. For complete details in OFAC's usual format see the various versions of OFAC's SDN list and SDNEW file. OFAC's Terrorism brochure has also been updated.

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NUMBER OF PAGES SENT (INCLUDING COVER PAGE): 24

SPECIAL INSTRUCTIONS:

OCT-23-2002 15:57 CIVIL DIV/FED PRC BR 202 616 8282 P.02/23

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

1724-008 10/23/02
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FAC No. 2060220

MEMORANDUM FOR R. RICHARD NEWCOMB
DIRECTOR
OFFICE OF FOREIGN ASSETS CONTROL

THROUGH: J. Robert McBrien
Chief, International Programs Division

FROM:
Senior International Programs Officer

SUBJECT: E.O. 13224 Designation of Global Relief Foundation [U]

[U] ENTITY:

Global Relief Foundation, Inc. [U]

Offices in the United States:

1) P.O. Box 1406, Bridgeview, Illinois 60455, U.S.A. [U]

Foreign Offices:

Fondation Secours Mondial a.s.b.l. [U]
(a.k.a. Fondation Secours Mondial – Belgique a.s.b.l.) [U]
(a.k.a. Fondation Secours Mondial vzw) [U]
(a.k.a. FSM) [U]
(a.k.a. Stichting Wereldhulp – België, v.z.w.) [U]
(a.k.a. Fondation Secours Mondial – Kosova) [U]
(a.k.a. Fondation Secours Mondial "World Relief") [U]
(a.k.a. Secours Mondial de France) [U]

2) Vaatjesstraat, 29, 2580 Putte, Belgium [U]
3) Rue des Bataves 69, 1040 Etterbeek, Brussels, Belgium [U]
4) P.O. Box 6, 1040 Etterbeek 2, Brussels, Belgium [U]
5) Mula Mustafe Baseskije Street No. 72, Sarajevo, Bosnia [U]
6) Put Mladih Muslimana Street 30/A, Sarajevo, Bosnia [U]
7) Rr. Skenderbeu 76, Lagjja Sefa, Gjakova, Kosovo [U]
8) YII Morina Road, Drakovica, Kosovo [U]

09) Rruga Kavaje, Building No. 3, Apartment No. 61, P.O. Box 2892, Tirana, Albania [U]
10) House 26, Street No. 54, Sector F - 11/4, Islamabad, Pakistan [U]
11) Saray Cad. No. 37 B Blok, Yesilyurt Apt. 2/4, Sirinevler, Turkey [U]
12) 29 Rue Ampere, 67100 Strasbourg, France [U]

Other Foreign Locations:

13) Afghanistan [U]
14) Azerbaijan [U]
15) Bangladesh [U]
16) Chechnya (Russia) [U]
17) China [U]
18) Eritrea [U]
19) Ethiopia [U]
20) Georgia [U]
21) India [U]
22) Ingushetia (Russia) [U]
23) Iraq [U]
24) Jordan [U]
25) Kashmir [U]
26) Lebanon [U]
27) Sierra Leone [U]
28) Somalia [U]
29) Syria [U]
30) West Bank and Gaza [U]

Federal Employer Identification Number: 36-3804626 [U]
V.A.T. Number: BE 454.419.759 [U]

[U] The following is a summary of the evidence in the files of the Office of Foreign Assets Control [OFAC] which supports the designation of Global Relief Foundation [GRF] and its aliases under subsections 1(c) and (d) of Executive Order 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism" (September 23, 2001), section 203 of the International Emergency Economic Powers Act, as amended (50 U.S.C. § 1702), and section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. § 287c).

[U] FINDINGS:

[U] Based on the information described in this memorandum, including information from public documents, official U.S. Government sources, financial records, press articles, FBI information, submissions from GRF, and incorporating, by reference, the U.S. Government's Statement of Material Facts [Exhibit 1] filed on March 27, 2002, in Global Relief Foundation, Inc., v. O'Neill, et al., (N.D. Ill.) No. 02-C-674, there is reason to believe that Global Relief Foundation, among other activities, acts for or on behalf of, or assists in, sponsors, or provides financial, material, or

technological support for, or financial or other services to or in support of, Al Qaida, Usama Bin Ladin, and other designated terrorist organizations.

[U] The major findings are the following:

- [U] Global Relief Foundation and its officials have had multiple contacts with individuals who are linked to Usama Bin Ladin and Al Qaida.
- [U] Global Relief Foundation and its officials receive and/or have received funding from individuals associated with Al Qaida.

[U] INTRODUCTION:

[U] President Bush issued Executive Order 13224 (September 23, 2001) declaring a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and the Pentagon. The E.O. authorizes the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, to designate those persons determined to be:

1) owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the E.O., or those determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the E.O.;
2) assisting in, sponsoring, or providing financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to E.O. 13224 or determined to be subject to this E.O.; or
3) associated with those persons listed in the Annex, or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the E.O.

[U] ENTITY:

[U] Global Relief Foundation, Inc.

[U] GRF in the U.S.:

[U] Global Relief Foundation, Inc. [GRF] was headquartered at 9935 South 76th Avenue, Unit 1, Bridgeview, Illinois 60455. Its current mailing address is P.O. Box-1406, Bridgeview, Illinois 60455. Its Federal Employer Identification Number is 36-3804626. [Exhibit 2, p; Exhibit 4, p.1; Exhibit 22; Exhibit 49, p.8] The telephone number is 708-233-1473. [Exhibit 4, p.1; Exhibit 22]

Its website address is [redacted].org. [Exhibit 23; Exhibit 49, p.8] GRF was incorporated in Illinois on January 10, 1992. [Exhibit 4, p.4; Exhibit 6] It has a § 501(c)(3) status as a tax-exempt, non-profit organization. According to GRF's Form 990, GRF grossed $5,272,891 in 2000. [Exhibit 3; [redacted]]

(U) GRF's Foreign Offices:

[U] In Europe, GRF is known as Fondation Secours Mondial a.s.b.l., Fondation Secours Mondial - Belgique a.s.b.l., Fondation Secours Mondial vzw and as FSM [FSM]. [Exhibit 27; Exhibit 43; Exhibit 45; Exhibit 70] It has locations at Rue des Batayes 69, 1040 Etterbeek, Brussels, Belgium [Exhibit 27; Exhibit 43] and at Vaatjesstraat, 29, 2580 Putte, Belgium [Exhibit 32; Exhibit 45] and a mailing address at P.O. Box 6, 1040 Etterbeek 2, Brussels, Belgium [Exhibit 23]. Its V.A.T. number is BE 454,419,759. [Exhibit 43] FSM's telephone number in Belgium is 0032 (015) 760 464. [Exhibit 23; Exhibit 45] Its email address in Belgium is fsmeurop@compuserve.com. [Exhibit 22] FSM was incorporated in Belgium on November 17, 1994. [Exhibit 27; Exhibit 32] According to GRF, FSM is its sister organization and is heavily regulated and controlled by the Belgian government. [Exhibit 60, ¶2; Exhibit 65; Exhibit 75, ¶2] Despite this regulation, GRF USA funneled hundreds of thousands of dollars through FSM. [Exhibit 37, p.2; Exhibit 49, pp.4,6; Exhibit 70]

[U] GRF or FSM is also known by the following names:

Fondation Secours Mondial – Kosova [Exhibit 69] [U]
Stichting Wereldhulp – België, v.z.w. [Exhibit 45] [U]
Fondation Secours Mondial "World Relief" [Exhibit 44] [U]
Secours Mondial de France [Exhibit 84] [U]

[U] According to a GRF document, last updated on February 22, 2001, GRF maintains or is affiliated with multiple offices in Africa, Asia, Europe, the Middle East and the United States. These GRF locations include Afghanistan, Albania, Azerbaijan, Bangladesh, Belgium, Bosnia, Chechnya, China, Eritrea, Ethiopia, Georgia, India, Ingushetia, Iraq, Jordan, Kashmir, Kosovo, Lebanon, Pakistan, Palestine (West Bank and Gaza), Sierra Leone, Somalia, Syria, and the U.S. [Exhibit 22; Exhibit 49] According to a GRF website in Dutch, its 2000 IRS Form 990, copies of audit reports, and invoices for the year ending December 31, 2000, GRF or FSM also has an office in Turkey [Exhibit 34; Exhibit 45; Exhibit 58] [U]

[U] The following are additional locations or addresses for GRF or FSM:

Put Mladih Muslimana Street 30/A, Sarajevo, Bosnia [Exhibit 38; Exhibit 44, ¶4] [U]
Mula Mustafe Baseskije Street No. 72, Sarajevo, Bosnia [Exhibit 44, ¶3C] [U]
Rr. Skenderbeu 76, Lagjja Sefa, Gjakova, Kosovo; telephone 381 390 23725 [Exhibit 3; Exhibit 11; Exhibit 23] [U]
Ylli Morina Road, Djakovica, Kosovo [Exhibit 40, ¶4] [U]
House 267 Street No. 54, Sector F - 11/4, Islamabad, Pakistan [Exhibit 23] [U]
Saray Cad. No. 37 B Blok, Yesilyurt Apt. 2/4, Sirinevler, Turkey [Exhibit 72] [U]
29 Rue Ampere, 67100 Strasbourg, France [Exhibit 84] [U]

Its website address is [redacted].org. [Exhibit 22; Exhibit 49, p.8] GRF was incorporated in Illinois on January 30, 1992. [Exhibit 4, p.4; Exhibit 6] It has a § 501(c)(3) status as a tax-exempt, non-profit organization. According to GRF's Form 990, GRF grossed $5,272,891 in 2000. [Exhibit 3; Exhibit 11; Exhibit 23]

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[U] In Europe, GRF is known as Fondation Secours Mondial a.s.b.l., Fondation Secours Mondial - Belgique a.s.b.l., Fondation Secours Mondial vzw and as FSM [FSM]. [Exhibit 27; Exhibit 43; Exhibit 45; Exhibit 70] It has locations at Rue des Bataves 69, 1040 Etterbeek, Brussels, Belgium [Exhibit 27; Exhibit 43] and at Vaatjesstraat, 29, 2580 Putte, Belgium [Exhibit 32; Exhibit 45] and a mailing address at P.O. Box 6, 1040 Etterbeek 2, Brussels, Belgium [Exhibit 23]. Its V.A.T. number is BE 454,419,759. [Exhibit 43] FSM's telephone number in Belgium is 0032 (015) 760 464. [Exhibit 23; Exhibit 45] Its email address in Belgium is fsmeurop@compuserve.com. [Exhibit 22] FSM was incorporated in Belgium on November 17, 1994. [Exhibit 27; Exhibit 32] According to GRF, FSM is its sister organization and is heavily regulated and controlled by the Belgian government. [Exhibit 60, ¶2; Exhibit 65; Exhibit 75, ¶2] Despite this regulation, GRF USA funneled hundreds of thousands of dollars through FSM. [Exhibit 37, p.2; Exhibit 49, pp.4,6; Exhibit 70]

[U] GRF or FSM is also known by the following names:

Fondation Secours Mondial – Kosova [Exhibit 69] [U]
Stichting Wereldhulp – België, v.z.w. [Exhibit 45] [U]
Fondation Secours Mondial "World Relief" [Exhibit 44] [U]
Secours Mondial de France [Exhibit 84] [U]

[U] According to a GRF document, last updated on February 22, 2001, GRF maintains or is affiliated with multiple offices in Africa, Asia, Europe, the Middle East and the United States. These GRF locations include Afghanistan, Albania, Azerbaijan, Bangladesh, Belgium, Bosnia, Chechnya, China, Eritrea, Ethiopia, Georgia, India, Ingushetia, Iraq, Jordan, Kashmir, Kosovo, Lebanon, Pakistan, Palestine (West Bank and Gaza), Sierra Leone, Somalia, Syria, and the U.S. [Exhibit 22; Exhibit 49] According to a GRF website in Dutch, its 2000 IRS Form 990, copies of audit reports, and invoices for the year ending December 31, 2000, GRF or FSM also has an office in Turkey [Exhibit 34; Exhibit 45; Exhibit 58] [U]

[U] The following are additional locations or addresses for GRF or FSM:

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Ylli Morina Road, Djakovica, Kosovo [Exhibit 40, ¶4] [U]
House 267 Street No. 54, Sector F - 11/4, Islamabad, Pakistan [Exhibit 23] [U]
Saray Cad. No. 37 B Blok, Yesilyurt Apt. 2/4, Sirinevler, Turkey [Exhibit 72] [U]
29 Rue Ampere, 67100 Strasbourg, France [Exhibit 84] [U]

However, the Rr. Skenderbeu 76 may possibly be closed and may now be a private residence. There is no further information to verify this. [Exhibit 11]

[U] GRF is also registered in Albania as a non-governmental agency. It registered in Albania on September 4, 1998. Its address in Albania is Rruga e Kavajes, Building No. 3, Apartment No. 61, P.O. Box 2892, Tirana, Albania. [Exhibit 13; Exhibit 31]

[U] In his supplemental declaration, submitted to OFAC, Nabil Sayadi, the founder and manager of GRF/FSM in Brussels, Belgium, attests that "[n]either GRF nor FSM has ever had an office in Bosnia Herzegovina." [Exhibit 75, ¶4] Considerable evidence exists to the contrary. A September 2001 invoice to GRF for computer equipment listed an address for GRF in Bosnia as the purchaser. [Exhibit 38] On December 14, 2001, local police raided the GRF offices in Bosnia and seized documents. [Exhibit 54, ¶62]

[U] GRF's Personnel:

[U] The Executive Director of GRF is Mohamad Chehade. [Exhibit 2, p.4; Exhibit 34, p.4;] Rabih H. Haddad was the Chairman of the Board in 1999 and served as GRF's President throughout the 1990s and in 2000. Haddad is also the Treasurer of FSM in Belgium. [Exhibit 2, p.4; Exhibit 27; Exhibit 34, p.4] According to the 1999 IRS Form 990 [990], Hazem Rageb was the Treasurer of GRF, but in the 2000 filing, the Treasurer was identified as Mohamad F. Ahmad. [Exhibit 2, p.4; Exhibit 34, p.4] Nabil Abdul Sayadi (a.k.a. Abou Zeinab) is the founder, Chairman, President, director and manager of GRF/FSM in Brussels, Belgium. [Exhibit

27; Exhibit 60, p.1, ¶¶8,10] Sayadi's wife Patricia Vinck is the Secretary of FSM. [Exhibit 27; Exhibit 60, ¶8] Ahmad H. Sa'id is the GRF/FSM Executive Director in Kosovo. [Exhibit 3]

[U] GRF's Foreign Donations:

[U] GRF has characterized itself as "the largest" U.S.-based Islamic "charitable" organization "with respect to the geographic scope of its relief programs." [Exhibit 54, ¶ 41] Incorporated in Illinois in 1992, GRF began operations with nearly $700,000 in financing; by 2000, it reported over $5 million in contributions. [Exhibit 54, ¶ 39]

[U] According to its 990s, between 1994 and 2000, over 90 percent of GRF's contributions have been sent outside the United States. [Exhibit 54, ¶ 40] Most of these contributions went to regions of Islamic extremist violence and insurgency, including, but not limited to, Afghanistan, Albania, Bangladesh, Bosnia, Chechnya, Iraq, Kashmir, Kosovo, Lebanon, and Pakistan. [Exhibit 54, ¶¶ 40-41, 44a] In 1994, all of GRF's aid ($164,582) was purportedly sent toward foreign assistance, including a clinical lab in Pakistan, a medical clinic in Lebanon, an orphan school in Pakistan, food assistance to Afghan refugee camps in Pakistan, and the Bosnian Mission at the UN. [Exhibit 35] In 2000, GRF sent $3,976,576 to Albania, Bangladesh, Belgium, China, Chechnya, Ethiopia, Iraq, Jordan, Kosovo, Lebanon, Pakistan, Palestine, Sierra Leone, Somalia, Turkey, and the U.S., allegedly for food, clothing, emergency relief supplies, health care, education, orphans, direct grants, public awareness program and administrative expenses. [Exhibit 34]

[U] GRF's accountants have conceded that they did not know how overseas funds were being spent: "We were neither engaged to, nor did we verify the delivery of the program services in those countries. . . ." [Exhibit 54, ¶ 44b]

[U] According to FSM's financial statements, through the years, GRF has provided FSM with most of its funding: from 1,213,907 [type of currency unspecified] out of FSM's total income of 2,176,173 (or 56%) in 1997 to 14,278,869 out of 21,355,869 (or 67%) in 1999. [Exhibit 70]

[U] In Sayadi's supplemental declaration, he claims that GRF/FSM conducted humanitarian activity in Bosnia between 1995 and 2001, but stated that the total of all projects "did not exceed $200,000 if everything was totaled from 1995 until December 2001." [Exhibit 75, ¶5G] GRF's own statements are to the contrary. According to GRF's Spring 2001 newsletter, GRF's relief program provided $209,300 in medical equipment to Kosova Hospital. [Exhibit 49, pp.4,6] In addition, GRF's Form 990 for 1996 stated that GRF spent $112,837 in cash and $200,000 in goods for relief programs in Bosnia and neighboring countries. [Exhibit 37, p.2]

[U] GRF's Founding:

[U] Makhtab al-Khidamat [MAK] was co-founded by Sheikh Abdullah Azzam and Usama bin Laden [UBL] in the 1980s and served as the precursor organization to Al Qaida. [Exhibit 28; Exhibit 48; Exhibit 83] MAK was designated by President Bush in E.O. 13224 and subsequently by the UN under Resolution 1333. The organization has helped funnel fighters and money to the Afghan resistance in Peshawar, Pakistan, and established recruitment centers worldwide to fight the Soviets. [Exhibit 28] Azzam served as a mentor to UBL, who, in turn, acted as MAK's principal financier. [Exhibit 83] Azzam is also regarded as the historical leader of HAMAS.[1] [Exhibit 83] Azzam was killed in 1989 by a car bomb.[2] [Exhibit 28]

[U] Rabih Haddad, a senior GRF official who co-founded GRF and served as its president throughout the 1990s and in the year 2000, worked for MAK in Pakistan in the early 1990s. [Exhibit 2, p.4; Exhibit 34, p.4; Exhibit 35, p.4; Exhibit 36, p.4; Exhibit 78, pp.76, 80] At a recent immigration hearing, Haddad conceded that he met Azzam in Pakistan and characterized him as a "hero." [Exhibit 78, pp.232-33]

[U] GRF has stocked and promoted audio tapes and books authored by Azzam that glorify armed jihad, including "The international conspiracy against Jihad," "Words from the first firing line," and "The Jihad in its present stage." [Exhibit 26; Exhibit 54, ¶73; Exhibit 59] Despite Azzam's terrorist background, GRF has enthusiastically promoted Azzam's materials to the public: "His [Azzam's] theology is a sea, his words are jewels, and his thoughts are a light for those who are holding the smoldering embers. He lived the Jihad experiences of the 20th century in Afghanistan . . . and Palestine, and produced a new theory for saving the [*Islamic*] Nation from disgrace, shame, weakness, and submission to others." [Exhibit 54, ¶ 73]

[1] HAMAS was designated as an SDGT under E.O. 13224 as well as an earlier executive order. [U]

[U] Haddad, who has been a central figure in GRF since its founding, is currently facing deportation for overstaying his nonimmigrant visa. [Exhibit 79, pp.2-3] In the related proceedings, both GRF's and Haddad's credibility have been called into question. GRF's tax returns have consistently declared a zero income for Haddad for his work. [Exhibit 34, p.4; Exhibit 35, p.4] On February 1, 1999, Haddad filled out a housing application for Concord Management Limited to rent a federally-subsidized apartment in Ann Arbor, Michigan. In that application, Haddad listed his employer as GRF and his annual salary as $29,000, an amount that qualified him for low-income housing. On December 12, 2000, Chehade verified this salary in a signed form. Previously, in 1994, when Haddad applied for an unsubsidized apartment in Illinois, he listed GRF as his employer in the application and claimed a salary of $40,000. Chehade wrote a letter confirming Haddad's salary in 1994 as well. [Exhibit 79, p.8]

[U] In early 2000, the FBI attempted to question Hazem Rageb, a long-time director of GRF, about GRF's suspected links to terrorism. Rageb refused to cooperate and, shortly thereafter, he left the country, after at least seven years with GRF in the United States. He was later questioned by Jordanian authorities. [Exhibit 54, ¶ 44c]

[U] Foreign Interests:

[U] OFAC has identified numerous "foreign interests"[3] in GRF, including the presence of two foreign nationals on its board of directors, offices in over twenty countries, substantial foreign contributions to GRF's offices in the United States, and the fact that GRF directs nearly all of its monies overseas. GRF's corporate resolution of June 30, 2002 proposes to add a fifth person, who is a U.S. citizen, to its board. According to GRF's attorney, if the resolution is not acceptable to OFAC, Chehade and Haddad are willing to step down and leave only U.S. citizens on its board. [Exhibit 61] However, neither GRF's addition of a U.S. citizen to its board of directors nor its proposal to remove its two foreign nationals from its board undercuts the applicability of IEEPA to GRF, as evidenced by the foreign interests referenced throughout this document.

[U] GRF's Links to Usama bin Ladin and Al Qaida:

[3] The International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §§ 1701 *et seq.*, specifically authorizes the President in times of declared national emergency to regulate any property in which a foreign country or foreign national has an interest. These Presidential powers include the express authority to "investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit," and the President may take those actions with respect to the exercise of a broad range of property interests:

> "any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States." *Id.* § 1702(a)(1)(B), as amended by Pub. L. No. 107-56, § 106(1), 115 Stat. 272, 277. [U]

The President may exercise those powers "to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such a threat." *Id.* § 1701(a). [U]

[U] GRF and Wadih El-Hage:

[U] GRF and FSM officers have also had contacts with Wadih El-Hage, UBL's personal secretary during the time that UBL was in Sudan. [Exhibit 54, ¶65] El-Hage was convicted in May 2001 for conspiracy to kill Americans for his role in the UBL-directed 1998 bombings of the U.S. embassies in Kenya and Tanzania.[1] The FBI reported that evidence introduced at the 2001 trial in United States v. bin Laden in the Southern District of New York "demonstrated that, in the late 1990s, GRF maintained communications with Wadih el-Hage, a convicted defendant in that case closely linked to Usama bin Laden." [Exhibit 54, ¶65] At the time that El-Hage was in contact with GRF, he resided in Kenya and "played an 'active role' in an al Qaeda terrorist cell operating there." [Exhibit 54, ¶65] While in Kenya in 1996 and 1997, El-Hage called indicted fugitive Muhammad Atef, UBL's military commander, on UBL's satellite phone; he also visited UBL in Afghanistan on two occasions in 1997. [Exhibit 54, ¶65] In his declaration, Sayadi admits that he called and spoke with El-Hage at least three times from 1995 to 1997 and that El-Hage also called him several times during the same timeframe. [Exhibit 60, ¶24] Documents recovered in a search in Kenya show that El-Hage also communicated with GRF in Illinois after returning from a visit with al Qaida leadership in Afghanistan in February 1997. [Exhibit 54, ¶65]

[U] GRF's attorney argues that U.S. Attorney Patrick Fitzgerald conceded that El-Hage was also involved in some legitimate humanitarian activities. [Exhibit 76] Based on the evidence cited herein, however, it is reasonable to conclude that Wadih El-Hage's contacts with GRF were not strictly limited to humanitarian activities.

[U] GRF and Al Qaida Cells in Europe:

[U] GRF also has ties to Muhammed Galeb Kalaje Zouaydi, a suspected financier of al Qaida's worldwide efforts, who was arrested by Spanish authorities in April 2002. Spain's Interior Ministry has described transfers totaling about $600,000 from Zouaydi and his partners to Al Qaida-related organizations, including GRF. [Exhibit 80, p.2] Zouaydi apparently sent approximately $100,000 to Mohamed Bahaiah, allegedly a courier for UBL between Afghanistan and Europe, and about $44,000 to Imad Eddin Barakat Yarkas, the suspected head of a Madrid

[1] U.S. v. Usama Bin Ladin, 146 F. Supp. 2d 373 (S.D.N.Y. 2001) (U)

Al Qaida cell. [Exhibit 80, p.2] He also provided funds to Mamoun Darkazanli,[10] a suspected associate of September 11 hijacker Mohamed Atta. Along with these transfers, Zouaydi sent over $200,000 to Nabil Sayadi, head of GRF's Belgium office. [Exhibit 80, p.2] GRF's attorney has acknowledged that GRF received funds from Zouaydi. [Exhibit 74]

- [U] Sayadi's responses to these ties only confirm the closeness of his relationship with these men. In his declaration, Sayadi admits to knowing and working with both Zouaydi and Darkazanli for many years and does not deny that GRF received funds from both. [Exhibit 60, ¶¶12-15] Sayadi further acknowledges that, in 1992, Zouaydi gave him $1,000 as a wedding gift. [Exhibit 60, ¶17] Sayadi pleads ignorance as to either man's connections to Al Qaida. Based on Sayadi's acknowledged close and longstanding personal and business relationships with these terrorists, it is reasonable to conclude that Sayadi was aware of their affiliations with Al Qaida.

[10] Darkazanli was named an SDGT on October 12, 2001 (66 Fed. Reg. 54407). Darkazanli's company, Mamoun Darkazanli Import Export Company was designated by the President in the annex to E.O. 13224 (66 Fed. Reg. 49083). (U)

[U] GRF's Links to other Terrorist Groups:

[U] In the year 2000, GRF received $18,521 from the Holy Land Foundation [HLF] in Richardson, Texas. HLF was designated by the U.S. Treasury Department as a Specially Designated Terrorist and a Specially Designated Global Terrorist on December 4, 2001, and redesignated on May 31, 2002, based on its support for HAMAS. HLF is a major fundraiser for HAMAS in the U.S. [Exhibit 34, p.1 of line 1d] The Treasury Department's designation of Holy Land was upheld by a federal district court on August 8, 2002, in Holy Land Foundation v. Ashcroft, __ F. Supp.2d __, 2002 WL 1818485 (D.D.C. Aug. 8, 2002).

[U] GRF has published several Arabic newsletters and pamphlets that advocate armed action through jihad against groups perceived to be un-Islamic. For example, one 1995 GRF pamphlet reads "God has equated martyrdom through JIHAD with supplying funds for the JIHAD effort. All contributions should be mailed to: GRF." [Exhibit 46] Another GRF newsletter requested donations "for God's cause ... they (the Zakat funds) are disbursed for equipping the raiders, for the purchase of ammunition and food, and for their (the Mujahideen's) transportation so that they can raise God the Almighty's word . . . it is likely that the most important of disbursement of Zakat in our times is on the Jihad for God's cause . . . ." [Exhibit 53]

[U] In Sayadi's declaration, he maintains that the term "jihad" has several definitions, not all of which refer to violent struggle. [Exhibit 60, ¶25] Nevertheless, in the context in which GRF has used the term, including a sentence on "jihad" that references equipping raiders and the purchase of ammunition, it is reasonable to conclude that GRF in fact uses the word "jihad" to refer to religiously-motivated violence. [Exhibit 53]

[U] Photographs found in GRF's Chicago offices in 1997 indicate some of the types of supplies that GRF sent abroad. The photographs depict large boxes arranged under a GRF banner. [Exhibit 54, ¶74] The boxes contain sophisticated communications equipment, including approximately 200 handheld radio transceivers, long-range radio antennas, and portable power packs, with an estimated total value of $120,000. [Exhibit 54, ¶74] The radio transceivers were the same model used by Islamic Gama'at, an SGDT entity, in its assassination attempt on Egyptian President Hosni Mubarak in 1995. [Exhibit 54, ¶74] A tool kit, binoculars, saddles, and ropes are also displayed. [Exhibit 54, ¶74] Other photographs depict fighters armed with automatic rifles, a sand-bagged bunker with a radio antenna mounted outside, and mutilated corpses with the name "KPI" (Kashmir Press International) printed alongside. [Exhibit 54, ¶75] Another photograph displays two dead men with the caption "Hizbul Mujahideen," a known terrorist organization operating in the Kashmir region. [Exhibit 54, ¶75] On the reverse side of the photograph is handwritten in Arabic, "two martyrs killed by the Indian government." [Exhibit 54, ¶75]

[U] In his declaration, Marwan Haddad, GRF's Caucasus director, claims to have no knowledge of this communications equipment or how it came to be photographed under the GRF logo. He further asserts that, to his knowledge, GRF did not take these photographs. [Exhibit 62, ¶9] A second GRF employee admits, to the contrary, that a GRF "helper" in Chechnya took the photographs, but claims that the equipment belonged to the Chechen government. [Exhibit 63, ¶4] An official of the "Chechen Republic of Ichkeria in Azerbaijan" indicates that some unspecified Chechen government equipment was at one time photographed under a GRF banner. He does not specifically mention the communications equipment or the other photographs in issue. [Exhibit 64] Given the inconsistencies in the two GRF declarations and the lack of specificity in the Chechen official's declaration, GRF's contention that this equipment belonged to the Chechen government is undermined by the fact that the equipment is arranged below prominently-displayed GRF logos and the fact that these photographs were discovered outside of GRF's Chicago, IL headquarters.

[U] In his declaration, Haddad describes the humanitarian works of GRF-Caucasus from 1995 to 2000 as helping Chechen refugees. [Exhibit 62, ¶¶3-8] However, Haddad does not disclose that GRF's own records indicate that GRF's funding and activities in Chechnya only went to "shaheed" ("martyred") families. [Exhibit 77, generally]

Exhibit 6 – Global Relief Foundation Illinois Corporation search (hup://www.cyberdriveillinois.com/cgi-bin/business_services/corp.s?ID=56672389&CTYPE=01) [U]

Exhibit 11 – Global Relief Foundation address in Kosovo [U]

Exhibit 13 – Affidavit, dated 15 July 2002, of Ilirjan Zylyftari, Director of Police for the Tirana Prefecture [U]

Exhibit 22 – List of GRF offices and affiliates dated February 22, 2001 [U]

Exhibit 23 – Letter from Gordon & Simmons to OFAC dated June 24, 2002, with attachments (select pages) [U]

[U] Chronology of Blocking Events:

[U] On December 14, 2001, the FBI, pursuant to a FISA (Foreign Intelligence Surveillance Act) search warrant, raided the premises of Global Relief Foundation in Bridgeview, Illinois and removed documents and assets of Global Relief Foundation. Later, the same day, OFAC issued the blocking notice, described in the next paragraph.

[U] On December 14, 2001, the Office of Foreign Assets Control ["OFAC"] blocked the funds, accounts, and business records of Global Relief Foundation pending further investigation and issued a "Blocking Notice and Requirement to Furnish Information" to Global Relief Foundation, Inc.

[U] On January 28, 2002, Global Relief Foundation filed suit in U.S. District Court, Northern District of Illinois, against the Departments of State, Justice, specifically, FBI, and also Treasury, specifically, the Office of Foreign Assets Control. On June 11, 2002, Judge Wayne Andersen, of the U.S. District Court for the Northern District of Illinois, denied GRF's motion for a preliminary injunction in full.

[U] EXHIBITS:

Exhibit 2 – Form 990 for year 1999 for Global Relief Foundation, Inc. dated August 30, 2000 [U]

Exhibit 3 – Global Relief Foundation Agency Form dated March 19, 2001 (http://www.reliefweb.int/hcic/ngo_database/html/137.htm) [U]

Exhibit 4 – Dun & Bradstreet Report for Global Relief Foundation, Inc. dated December 31, 2000 [U]

Exhibit 26 – FBI report 199-M-CG-92811-213 (December 15, 1998) [U]

Exhibit 27 - Fondation Secours Mondial Memorandum and Articles of Association in Belgium dated December 27, 1994 (English translation) [U]

Exhibit 28 – "U.S. Government Factsheet on Usama Bin Ladin" dated August 20, 1998 (http://usembassy.state.gov/afghanistan/wwwhtr01.html) [U]

Exhibit 32 – Infobel.com search of "Fondation Secours Mondial" dated 5/23/02 [U]

Exhibit 34 - Form 990 for year 2000 for Global Relief Foundation, Inc. dated June 22, 2001 [U]

Exhibit 35 - Form 990 for year 1994 for Global Relief Foundation, Inc. dated August 1, 1995 [U]

Exhibit 36 - Form 990 for year 1995 for Global Relief Foundation, Inc. dated July 25, 1996 [U]

Exhibit 37 - Form 990 for year 1996 for Global Relief Foundation, Inc. dated March 31, 1998 [U]

Exhibit 38 – Kim Tec Computers invoice dated September 13, 2001. [U]

Exhibit 43 – Dun & Bradstreet Report for Fondation Secours Mondial undated, but retrieved May 24, 2002 [U]

Exhibit 45 – Global Relief Foundation website in the Netherlands (in Dutch): http://www.overzee.nl/Hulpacties/globalreliefmain.htm [U]

Exhibit 46 – FBI report 199-M-CG-92811-48 (October 1997) (translation of "al-Thilal") [U]

Exhibit 47 – Frontline, "Hunting Bin Laden: Suspects & Charges" dated May 29, 2001, http://www.pbs.org/wgbh/pages/frontline/shows/binladen/bombings/charges.html [U]

Exhibit 48 – "Boston Charity Tied to Bin Laden al-Kifah Named in '98 Indictment in New York City," by Michael Kranish and Stephen Kurkjian, The Boston Globe, September 26, 2001. [U]

Exhibit 49 – Global News, Spring 2001 [U]

Exhibit 53 – Translation of an explanation of Zakat (Charity) guidelines from "Global News," undated [U]

Exhibit 54 – Global Relief Foundation v. O'Neill, Unclassified Statement of Material Facts, March 27, 2002. [U]

Exhibit 56 – Letter from Gordon & Simmons to OFAC dated December 26, 2001, with attachments (select pages) [U]

Exhibit 57 – Letter from Gordon & Simmons to OFAC dated January 22, 2002, with attachments (select pages) [U]

Exhibit 58 – Global Relief Foundation, Inc. (Turkey Branch) Audited Accounts for the year ended December 31, 2000 [U]

Exhibit 59 – Translations of GRF materials, undated with declaration of SA Brent Potter dated March 26, 2002 [U]

Exhibit 60 – Declaration of Nabil Sayadi, dated June 12, 2002. [U]

Exhibit 61 – Resolution of the Board of Directors of Global Relief Foundation dated June 30, 2002; Gordon & Simmons letter to OFAC dated August 7, 2002 [U]

Exhibit 62 – Declaration of Marwan Haddad, dated June 10, 2002 [U]

Exhibit 63 – Declaration of Shamil Arnaev, dated June 12, 2002 [U]

Exhibit 64 – Statement of E. Asayev, Representation of Chechen Republic of Ichkeria in Azerbaijan, dated June 21, 2002 [U]

Exhibit 65 – Letter from Gordon & Simmons to OFAC dated May 10, 2002 [U]

Exhibit 67 – Global Relief Foundation v. O'Neill; Plaintiff's First Set of Requests for Admission dated April 24, 2002 [U]

Exhibit 69 – Global Relief Foundation/Fondation Secours Mondial – Kosova letterhead [U]

Exhibit 70 – Fondation Secours Mondial financial statements for years 1997, 1998 and 1999 (select pages) [U]

Exhibit 71 – Global Relief Foundation Summary Report dated July 1997 [U]

Exhibit 72 – GRF FedEx label dated September 19, 2001 [U]

Exhibit 74 – "Bin Laden aide tied to Bridgeview Group," Chicago Tribune, May 6, 2002 [U]

Exhibit 75 – Supplemental Declaration of Nabil Sayadi dated June 6, 2002 [U]

Exhibit 76 – Global Relief Foundation letter to OFAC dated September 27, 2002 [U]

Exhibit 77 – Global Relief Foundation reports of "Income Generating Project in Chechnya" [U]

Exhibit 78 – Transcripts from Rabih Haddad's Bond Hearing in Immigration Court, dated October 3, 2002 [U]

Exhibit 79 – Prehearing Brief from Rabih Haddad's removal Proceedings in Immigration Court, dated September 30, 2002 [U]

Exhibit 80 – Sebastian Rotella, "Firms' profits financed terror, Spain says," Chicago Tribune, (April 26, 2002) [U]

Exhibit 83 – "Blowback," Jane's Intelligence Review, August 1, 2001 [U]

APPENDIX H

Order Denying Rehearing and Rehearing En Banc

No. 02 C 674 (7th Cir. Apr 04, 2003)

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

April 4, 2003

Before

Hon. RICHARD D. CUDAHY, Circuit Judge

Hon. JOEL L. COFFEY, Circuit Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

GLOBAL RELIEF FOUNDATION, INC.,
Plaintiff-Appellant,

No. 02-2536 v.

PAUL H. O'NEILL, Secretary of Treasury, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 02 C 674
Wayne R. Andersen,
Judge.

Order

Plaintiff-appellant filed a petition for rehearing and rehearing en banc on February 14, 2003. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all of the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore DENIED.

APPENDIX I

U.S. Const. art. I. § 9, cl. 3; amends. V & VI

U.S. Const. Art. I § 9, cl. 3

"No Bill of Attainder or ex post facto Law shall be passed."

U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

APPENDIX J

18 U.S.C. 2339B (2000)

United States Code,

Section 2339B of Title 18

2339B. Providing material support or resources to designated foreign terrorist organizations

(a) Prohibited activities. --

(1) Unlawful conduct. --Whoever, within the United States or subject to the jurisdiction of the United States, knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life.

(2) Financial institutions. --Except as authorized by the Secretary, any financial institution that becomes aware that it has possession of, or control over, any funds in which a foreign terrorist organization, or its agent, has an interest, shall--

(A) retain possession of, or maintain control over, such funds; and

(B) report to the Secretary the existence of such funds in accordance with regulations issued by the Secretary.

(b) Civil penalty. --Any financial institution that knowingly fails to comply with subsection (a)(2) shall be subject to a civil penalty in an amount that is the greater of--

(A) $50,000 per violation; or

(B) twice the amount of which the financial institution was required under subsection (a)(2) to retain possession or control.

(c) Injunction. --Whenever it appears to the Secretary or the Attorney General that any person is engaged in, or is about to engage in, any act that constitutes, or would constitute, a violation of this section, the Attorney General may initiate civil action in a district court of the United States to enjoin such violation.

(d) Extraterritorial jurisdiction. --There is extraterritorial Federal jurisdiction over an offense under this section.

(e) Investigations. --

(1) In general. --The Attorney General shall conduct any investigation of a possible violation of this section, or of any license, order, or regulation issued pursuant to this section.

(2) Coordination with the Department of the Treasury. --The Attorney General shall work in coordination with the Secretary in investigations relating to--

(A) the compliance or noncompliance by a financial institution with the requirements of subsection (a)(2); and

(B) civil penalty proceedings authorized under subsection (b).

(3) Referral. --Any evidence of a criminal violation of this section arising in the course of an investigation by the Secretary or any other Federal agency shall be referred immediately to the Attorney General for further investigation. The Attorney General shall timely notify the Secretary of any action taken on referrals from the Secretary, and may refer investigations to the Secretary for remedial licensing or civil penalty action.

(f) Classified information in civil proceedings brought by the

United States. --

(1) Discovery of classified information by defendants. --

(A) Request by United States. --In any civil proceeding under this section, upon request made ex parte and in writing by the United States, a court, upon a sufficient showing, may authorize the United States to--

(i) redact specified items of classified information from documents to be introduced into evidence or made available to the defendant through discovery under the Federal Rules of Civil Procedure;

(ii) substitute a summary of the information for such classified documents; or

(iii) substitute a statement admitting relevant facts that the classified information would tend to prove.

(B) Order granting request. --If the court enters an order granting a request under this paragraph, the entire text of the documents to which the request relates shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(C) Denial of request. --If the court enters an order denying a request of the United States under this paragraph, the United States may take an immediate, interlocutory appeal in accordance with paragraph (5). For purposes of such an appeal, the entire text of the documents to which the request relates, together with any transcripts of arguments made ex parte to the court in connection therewith, shall be maintained under seal and delivered to the appellate court.

(2) Introduction of classified information; precautions by court.

--

(A) Exhibits. --To prevent unnecessary or inadvertent disclosure of classified information in a civil proceeding brought by the United States under this section, the United States may petition the court ex parte to admit, in lieu of classified writings, recordings, or photographs, one or more of the following:

(i) Copies of items from which classified information has been redacted.

(ii) Stipulations admitting relevant facts that specific classified information would tend to prove.

(iii) A declassified summary of the specific classified information.

(B) Determination by court. --The court shall grant a request under this paragraph if the court finds that the redacted item, stipulation, or summary is sufficient to allow the defendant to prepare a defense.

(3) Taking of trial testimony. --

(A) Objection. --During the examination of a witness in any civil proceeding brought by the United States under this subsection, the United States may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible.

(B) Action by court. --In determining whether a response is admissible, the court shall take precautions to guard against the compromise of any classified information, including--

(i) permitting the United States to provide the court, ex parte, with a proffer of the witness's response to the question or line of inquiry; and

(ii) requiring the defendant to provide the court with a proffer of the nature of the information that the defendant seeks to elicit.

(C) Obligation of defendant. --In any civil proceeding under this section, it shall be the defendant's obligation to establish the relevance and materiality of any classified information sought to be introduced.

(4) Appeal. --If the court enters an order denying a request of the United States under this subsection, the United States may take an immediate interlocutory appeal in accordance with paragraph (5).

(5) Interlocutory appeal. --

(A) Subject of appeal. --An interlocutory appeal by the United States shall lie to a court of appeals from a decision or order of a district court--

(i) authorizing the disclosure of classified information;

(ii) imposing sanctions for nondisclosure of classified information; or

(iii) refusing a protective order sought by the United States to prevent the disclosure of classified information.

(B) Expedited consideration. --

(i) In general. --An appeal taken pursuant to this paragraph, either before or during trial, shall be expedited by the court of appeals.

(ii) Appeals prior to trial. --If an appeal is of an order made prior to trial, an appeal shall be taken not later than 10 days after the decision or order appealed from, and the trial shall not commence until the appeal is resolved.

(iii) Appeals during trial. --If an appeal is taken during trial, the trial

court shall adjourn the trial until the appeal is resolved, and the court of appeals--

(I) shall hear argument on such appeal not later than 4 days after the adjournment of the trial;

(II) may dispense with written briefs other than the supporting materials previously submitted to the trial court;

(III) shall render its decision not later than 4 days after argument on appeal; and

(IV) may dispense with the issuance of a written opinion in rendering its decision.

(C) Effect of ruling. --An interlocutory appeal and decision shall not affect the right of the defendant, in a subsequent appeal from a final judgment, to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

(6) Construction. --Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States to protect against the disclosure of classified information, including the invocation of the military and State secrets privilege.

(g) Definitions. --As used in this section--

(1) the term "classified information" has the meaning given that term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.);

(2) the term "financial institution" has the same meaning as in section 5312(a)(2) of title 31, United States Code ;

(3) the term "funds" includes coin or currency of the United States or any other country, traveler's checks, personal checks, bank checks, money orders, stocks, bonds, debentures, drafts, letters of credit, any other negotiable instrument, and any electronic representation of any of the foregoing;

(4) the term "material support or resources" has the same meaning as in section 2339A;

(5) the term "Secretary" means the Secretary of the Treasury; and

(6) the term "terrorist organization" means an organization designated as a terrorist organization under section 219 of the Immigration and Nationality Act.

APPENDIX K

International Emergency Economic Powers Act,

50 U.S.C. §§ 1701-1707 (1977)

International Emergency Economic Powers Act,

50 U.S.C. §§ 1701, 1702, 1705

§§ 1701. Unusual and extraordinary threat; declaration of national emergency; exercise of Presidential authorities

(a) Any authority granted to the President by section 1702 of this title may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.

(b) The authorities granted to the President by section 1702 of this title may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this chapter and may not be exercised for any other purpose. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat.

§§ 1702. Presidential authorities

(a)(1) At the times and to the extent specified in section 1701 of this title, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise--

(A) investigate, regulate, or prohibit--

(i) any transactions in foreign exchange,

(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve

any interest of any foreign country or a national thereof,

(iii) the importing or exporting of currency or securities,

by any person, or with respect to any property, subject to the jurisdiction of the United States;

(B) investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States; and

(C) when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as. and upon the terms directed by the President, in such agency or person as the President may designate from time to time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these

purposes.

(2) In exercising the authorities granted by paragraph (1), the President may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative

to any act or transaction referred to in paragraph (1) either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of such paragraph. In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(3) Compliance with any regulation, instruction, or direction issued under this chapter shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this chapter, or any regulation, instruction, or direction issued under this chapter.

(b) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly--

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value;

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 1701 of this title, (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances; or

(3) the importation from any country, or the exportation to any country,

whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 2404 of the Appendix to this title, or under section 2405 of the Appendix to this title to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by chapter 37 of Title

18;

(4) any transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

(c) Classified information.--In any judicial review of a determination made under this section, if the determination was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act) such information may be submitted to the reviewing court ex parte and in camera. This subsection does not confer or imply any right to judicial review.

§§ 1705. Penalties

(a) A civil penalty of not to exceed $10,000 may be imposed on any person who violates, or attempts to violate, any license, order, or regulation issued under this chapter.

(b) Whoever willfully violates, or willfully attempts to violate, any license, order, or regulation issued under this chapter shall, upon conviction, be fined not more than $50,000, or, if a natural person, may

be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

APPENDIX L

Exec. Order No. 13224,

66 FR 49079 (2001)

Executive Order 13224, 66 Fed. Reg. 49079

Blocking Property and Prohibiting Transactions With Persons Who Commit,

Threaten To Commit, or Support Terrorism

September 23, 2001

*49079 By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq .)(IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution (UNSCR) 1214 of December 8, 1998, UNSCR 1267 of October 15, 1999, UNSCR 1333 of December 19, 2000, and the multilateral sanctions contained therein, and UNSCR 1363 of July 30, 2001, establishing a mechanism to monitor the implementation of UNSCR 1333,

I, GEORGE W. BUSH, President of the United States of America, find that grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks in New York, Pennsylvania, and the Pentagon committed on September 11, 2001, acts recognized and condemned in UNSCR 1368 of September 12, 2001, and UNSCR 1269 of October 19, 1999, and the continuing and immediate threat of further attacks on United States nationals or the United States constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and in furtherance of my proclamation of September 14, 2001, Declaration

of National Emergency by Reason of Certain Terrorist Attacks, hereby declare a national emergency to deal with that threat. I also find that because of the pervasiveness and expansiveness of the financial foundation of foreign terrorists, financial sanctions may be appropriate for those foreign persons that support or otherwise associate with these foreign terrorists. I also find that a need exists for further consultation and cooperation with, and sharing of information by, United States and foreign financial institutions as an additional tool to enable the United States to combat the financing of terrorism.

I hereby order:

Section 1. Except to the extent required by section 203(b) of IEEPA (50 U.S.C. 1702(b)), or provided in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property of the following persons that are in the United States or that hereafter come within the United States, or that hereafter come within the possession or control of United States persons are blocked:

(a) foreign persons listed in the Annex to this order;

(b) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States;

(c) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to this order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of this order; *49080

(d) except as provided in section 5 of this order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General;

(i) to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to this order or determined to be subject to this order; or

(ii) to be otherwise associated with those persons listed in the Annex to this order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of this order.

Sec. 2. Except to the extent required by section 203(b) of IEEPA (50 U.S.C. 1702(b)), or provided in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date:

(a) any transaction or dealing by United States persons or within the United States in property or interests in property blocked pursuant to this order is prohibited, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the Annex to this order or determined to be subject to this order;

(b) any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order is prohibited; and

(c) any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. For purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, corporation, or other organization, group, or subgroup;

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States; and

(d) the term "terrorism" means an activity that--

(i) involves a violent act or an act dangerous to human life, property, or infrastructure; and

(ii) appears to be intended--

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking.

Sec. 4. I hereby determine that the making of donations of the type specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by United States persons to persons determined to be subject to this order would seriously impair my ability to deal with the national emergency declared in this order, and would endanger Armed Forces of the United States that are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances, and hereby prohibit such donations as provided by section 1 of this order. Furthermore, I hereby determine that the Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX, Public Law 106-387) shall not affect the imposition or the continuation of the imposition of any unilateral agricultural sanction or unilateral medical sanction on *49081 any person determined to be subject to this order because imminent

involvement of the Armed Forces of the United States in hostilities is clearly indicated by the circumstances.

Sec. 5. With respect to those persons designated pursuant to subsection 1(d) of this order, the Secretary of the Treasury, in the exercise of his discretion and in consultation with the Secretary of State and the Attorney General, may take such other actions than the complete blocking of property or interests in property as the President is authorized to take under IEEPA and UNPA if the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, deems such other actions to be consistent with the national interests of the United States, considering such factors as he deems appropriate.

Sec. 6. The Secretary of State, the Secretary of the Treasury, and other appropriate agencies shall make all relevant efforts to cooperate and coordinate with other countries, including through technical assistance, as well as bilateral and multilateral agreements and arrangements, to achieve the objectives of this order, including the prevention and suppression of acts of terrorism, the denial of financing and financial services to terrorists and terrorist organizations, and the sharing of intelligence about funding activities in support of terrorism.

Sec. 7. The Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 8. Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses, or other forms

of administrative action issued, taken, or continued in effect heretofore or hereafter under 31 C.F.R. chapter V, except as expressly terminated, modified, or suspended by or pursuant to this order.

Sec. 9. Nothing contained in this order is intended to create, nor does it create, any right, benefit, or privilege, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, employees or any other person.

Sec. 10. For those persons listed in the Annex to this order or determined to be subject to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to this order.

Sec. 11. (a) This order is effective at 12:01 a.m. eastern daylight time on September 24, 2001. *49082

(b) This order shall be transmitted to the Congress and published in the Federal Register.

GEORGE W. BUSH

THE WHITE HOUSE,

September 23, 2001.

Exec. Order No. 13224, 66 FR 49079, 2001 WL 1126562

APPENDIX M

United States Code of Federal Regulations,

Sections 501.807

United States Code of Federal Regulations,

Sections 501.807

§§ 501.807 Procedures governing removal of names from appendices A, B, and C to this chapter.

A person may seek administrative reconsideration of his, her or its designation or that of a vessel as blocked, or assert that the circumstances resulting in the designation no longer apply, and thus seek to have the designation rescinded pursuant to the following administrative procedures:

(a) A person blocked under the provisions of any part of this chapter, including a specially designated national, specially designated terrorist, or specially designated narcotics trafficker (collectively,"a blocked person"), or a person owning a majority interest in a blocked vessel may submit arguments or evidence that the person believes establishes that insufficient basis exists for the designation. The blocked person also may propose remedial steps on the person's part, such as corporate reorganization, resignation of persons from positions in a blocked entity, or similar steps, which the person believes would negate the basis for designation. A person owning a majority interest in a blocked vessel may propose the sale of the vessel, with the proceeds to be placed into a blocked interest-bearing account after deducting the costs incurred while the vessel was blocked and the costs of the sale. This submission must be made in writing and addressed to the Director, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW--Annex, Washington, DC 20220.

(b) The information submitted by the blocked person seeking unblocking or by a person seeking the unblocking of a vessel will be reviewed by the Office of Foreign Assets Control, which may request

clarifying, corroborating, or other additional information.

(c) A blocked person seeking unblocking or a person seeking the unblocking of a vessel may request a meeting with the Office of Foreign Assets Control; however, such meetings are not required, and the office may, at its discretion, decline to conduct such meetings prior to completing a review pursuant to this section.

(d) After the Office of Foreign Assets Control has conducted a review of the request for reconsideration, it will provide a written decision to the blocked person or person seeking the unblocking of a vessel.

Supreme Court, U.S.
FILED
OCT 6 _ 2003
OFFICE OF THE CLERK

No. 03-46

In the Supreme Court of the United States

GLOBAL RELIEF FOUNDATION, INC., PETITIONER

v.

JOHN W. SNOW, SECRETARY OF THE TREASURY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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23 pp

QUESTION PRESENTED

Following the terrorist attacks of September 11, 2001, the President directed the Secretary of the Treasury to employ all appropriate measures to stop the flow of money supporting international terrorists. As part of that effort, and pursuant to authority conferred by statute and delegated by Executive Order, the Secretary first entered an interim blocking order pending investigation, and then designated petitioner as a Specially Designated Global Terrorist, thereby blocking petitioner's property. The question presented is as follows:

Whether the district court abused its discretion in denying petitioner's request for a preliminary injunction against enforcement of the interim blocking order.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-10a) is reported at 315 F.3d 748. The opinion of the district court (Pet. App. 1c-61c) is reported at 207 F. Supp. 2d 779.

JURISDICTION

The court of appeals entered its judgment on December 31, 2002. A petition for rehearing was denied on April 4, 2003 (Pet. App. 1h). The petition for a writ of certiorari was filed on July 3, 2003. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. The International Emergency Economic Powers Act (IEEPA), 50 U.S.C. 1701 *et seq.*, authorizes the President to "declare[] a national emergency with respect to" "any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States." 50 U.S.C. 1701(a). In the event of such an emergency,

> [t]he President may * * * investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States.

50 U.S.C. 1702(a)(1)(B), as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Pub. L. No. 107-56, § 106(1), 115 Stat. 277.

b. On September 25, 2001, in response to the terrorist attacks of September 11, the President issued Executive Order No. 13,224, which was designed to prevent the flow of funds used to support international terrorist activities. 66 Fed. Reg. 49,079. In that Order, the President declared a national emergency with respect to the "grave acts of terrorism * * * and the continuing and immediate threat of further attacks on United States nationals or the United States."

Ibid. Among other authorities, the President invoked IEEPA, and he determined that actual and threatened terrorist acts constitute "an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States." *Ibid.* Executive Order No. 13,224 identified 27 terrorists, terrorist organizations, and their supporters, designated them as such, and blocked their property and property interests subject to the jurisdiction of the United States. *Ibid.*; see *id.* at 49,083. The Executive Order also authorized the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, to designate additional individuals or entities whose property or interests in property should be blocked because they "act for or on behalf of," or are "owned or controlled by," designated terrorists, or because they "assist in, sponsor, or provide * * * support for," or are "otherwise associated" with, designated terrorists or their supporters. *Id.* at 49,079-49,080.

"[B]ecause of the pervasiveness and expansiveness of the financial foundation of foreign terrorists," the President noted the need for "financial sanctions" against those who engage in or support terrorism. Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (2001). The Executive Order directed "[a]ll agencies of the United States Government * * * to take all appropriate measures within their authority to carry out the provisions" of the Executive Order. *Id.* at 49,081. The Executive Order also stated that, in light of the ability of property owners "to transfer funds or assets instantaneously, prior notice to * * * persons [subject to blocking] of measures to be taken pursuant to this order would render these measures ineffectual." *Ibid.* The President accordingly determined that "there need be no

prior notice of a listing or determination made pursuant to this order." *Ibid.*

Finally, Executive Order No. 13,224 granted the Secretary of the Treasury authority to "employ all powers granted to the President by IEEPA." 66 Fed. Reg. at 49,081. The President specifically authorized the Secretary to promulgate rules and regulations to carry out the purposes of the Order, and to re-delegate such functions if necessary. *Ibid.* The Secretary has in turn delegated his authority to the Treasury Department's Office of Foreign Assets Control (OFAC).

c. OFAC is responsible for administering a range of economic sanctions programs under IEEPA and other authorities. In administering those sanctions programs, OFAC has promulgated regulations that define certain terms found in IEEPA, including "property" and "interest" in property. See, *e.g.*, 31 C.F.R. 500.311-500.312, 575.308, 575.315, 595.307, 595.310. OFAC has promulgated additional regulations that permit an individual or entity to seek a license to engage in transactions involving blocked property. See 31 C.F.R. 501.801-501.802. The regulations also establish a procedure by which a person may "seek administrative reconsideration" of a designation. 31 C.F.R. 501.807.

2. Petitioner describes itself as a "United States-based Islamic charitable organization," and asserts that its "mission has been to provide charitable relief throughout the world." Pet. 1-2. Petitioner was incorporated within the United States, but at the time of the interim blocking order at issue here, two of its three board members were foreign nationals. Pet. App. 5a. The intelligence and law-enforcement communities have long understood that some international terrorist organizations obtain funding by "us[ing] charities and non-governmental organizations ('NGOs') to funnel

money." C.A. App. E460; see, *e.g.*, *Boim* v. *Quranic Literacy Inst.*, 291 F.3d 1000, 1003-1004 & nn.3-4 (7th Cir. 2002) (noting evidence that charitable organizations may have served as a financial conduit for a Palestinian terrorist group). For that reason, the government's investigations into the funding of terrorist organizations and activities have sometimes focused on entities that hold themselves out as charitable organizations.

Petitioner's funds, accounts, and business records were initially blocked pending further investigation, in an order entered by OFAC and provided to petitioner on December 14, 2001. Pet. App. 11c. On that same day, the Federal Bureau of Investigation conducted a search of petitioner's headquarters office and the home of petitioner's executive director, and removed petitioner's records for analysis. The search was conducted under the authority of the Foreign Intelligence Surveillance Act of 1978 (FISA), 50 U.S.C. 1801 *et seq.*, pursuant to the emergency authorization of the Acting Attorney General. As provided in FISA, the search was then authorized within 72 hours by a warrant subsequently issued by the Foreign Intelligence Surveillance Court. See Pet. App. 14c-15c, 18c-22c. The district court concluded that the application for a warrant established probable cause to believe that petitioner and its executive director were agents of a foreign power within the meaning of FISA, 50 U.S.C. 1801(b)(2)(A). See Pet. App. 22c.[1]

OFAC issued the interim blocking order based on its conclusion that further, detailed investigation was necessary to determine whether petitioner is subject to designation as a Specially Designated Global Terrorist,

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[1] The search is not at issue in the current interlocutory appeal.

under IEEPA and Executive Order No. 13,224, for providing financial or other support to terrorists or their supporters. See Pet. App. 22c. During the period that the interim blocking order was in effect, petitioner requested and received from OFAC several licenses that allowed petitioner to use blocked funds for payment of business expenses and for legal representation. *Id.* at 15c.

On January 28, 2002, petitioner filed suit in federal district court, seeking declaratory and injunctive relief and a writ of mandamus that would compel the government to "unfreeze" petitioner's assets and return the property seized during the December 14, 2001, search (page 5, *supra*). See Pet. App. 15c. Before issuing the interim blocking order on December 14, 2001, OFAC reviewed both unclassified and classified information concerning petitioner. See *id.* at 14c. After the interim blocking order was issued, OFAC compiled additional information, based on its continuing investigation into petitioner's links with terrorists and their supporters. See C.A. App. E463. Materials gathered by OFAC during the course of its investigation, as well as additional materials and correspondence that OFAC received from petitioner, were submitted as the administrative record for the district court's review. See *id.* at E449. The classified information was submitted for the district court's *in camera* review (see Pet. App. 58c), in accordance with the USA PATRIOT Act's amendment of IEEPA, 50 U.S.C. 1702(c), added by USA PATRIOT Act § 106(2), 115 Stat. 278. On June 11, 2002, the district court denied petitioner's request for a preliminary injunction on the ground that petitioner had failed to demonstrate a likelihood of success on the merits of its challenge to the interim blocking order. Pet. App. 60c.

3. On May 24, 2002, while this suit was pending in the district court, OFAC proposed to designate petitioner as a Specially Designated Global Terrorist pursuant to Executive Order No. 13,224. See C.A. App. E767.[2] On August 19, 2002, petitioner submitted a lengthy pleading in the district court that discussed and responded to some of the evidence already in OFAC's possession; identified additional materials that petitioner wished to be included in the administrative record used to determine whether petitioner should be designated as a Specially Designated Global Terrorist; and recounted extensive correspondence between petitioner and OFAC related to petitioner's ability to mount a defense to the designation. See Global Relief Foundation Inc.'s R. Supp., Responding to OFAC's July 15, 2002 and Aug. 8, 2002 R. Supps. (No. 02 C 0674). At the time of the district court's order denying a preliminary injunction, those administrative proceedings were ongoing. On October 17, 2002, the Department of the Treasury, acting through OFAC, designated petitioner as a Specially Designated Global Terrorist. See 68 Fed. Reg. 400 (2002). That designation superseded the December 14, 2001, interim blocking order.

4. Petitioner's appeal, which sought reversal of the district court's denial of a preliminary injunction against enforcement of the interim blocking order, was pending at the time of the October 17, 2002, final designation. On December 31, 2002, the court of appeals affirmed the denial of preliminary injunctive relief. Pet. App. 1a-10a.

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[2] Because petitioner's funds, accounts, and business records were already frozen, and there was thus no danger of dissipation, OFAC provided prior notice to petitioner, along with the unclassified record on which the proposed designation would be based.

a. The court of appeals found that OFAC's October 17, 2002, designation of petitioner as a Specially Designated Global Terrorist did not moot petitioner's appeal from the district court's earlier denial of preliminary injunctive relief. Pet. App. 3a-5a. The court explained that some of petitioner's challenges to the interim blocking order—*e.g.*, petitioner's contention that "IEEPA *never* applies to the assets of any corporation that holds its charter from one of the United States," *id.* at 4a—would apply equally to the final designation, and it concluded that petitioner was "entitled to a prompt decision" with respect to those challenges, *id.* at 5a. The court held, however, that any issue specific to the interim order (*e.g.*, petitioner's contention that the order lacked adequate factual support) was of no continuing practical significance in light of the final designation, and that "some of [petitioner's] principal legal theories" would therefore "drop out of the case." *Id.* at 3a; see *id.* at 2a-3a. The court noted in particular that it was not deciding in this interlocutory appeal "whether [petitioner] supports terrorism (as Treasury has concluded)." *Id.* at 7a. That question, the court noted, remains pending in the district court, in petitioner's challenge to the final designation. *Ibid.*

b. The court of appeals rejected petitioner's argument "that the IEEPA does not apply to corporations that hold charters issued within the United States." Pet. App. 5a. The court explained that 50 U.S.C. 1702(a)(1)(B), which encompasses "any property in which any foreign country or a national thereof has any interest," is properly understood to refer to "beneficial rather than legal interests." Pet. App. 6a; see *id.* at 7a ("[T]he focus must be on how assets could be controlled and used, not on bare legal ownership."). The court held that foreign nationals have an "interest" in peti-

tioner's property, notwithstanding the fact that the corporation itself is chartered within this country, because petitioner "conducts its operations outside the United States; the funds are applied for the benefit of non-citizens and thus are covered by § 1702(a)(1)(B)." *Ibid.*

c. The court of appeals rejected petitioner's constitutional challenges to the interim freeze. Pet. App. 7a-9a. The court explained that "[t]here is no separation-of-powers problem" with the Executive Branch action at issue here because Executive Order No. 13,224 "delegates to the Secretary only those powers provided by statute." *Id.* at 7a-8a. The court rejected petitioner's contention that IEEPA is unconstitutional because it authorizes the use of classified information that may be considered *ex parte* by the district court. *Id.* at 8a. The court observed that *ex parte* consideration of confidential information is accepted practice in other contexts, and it stated that "[t]he Constitution would indeed be a suicide pact if the only way to curtail enemies' access to assets were to reveal information that might cost lives." *Ibid.* (citation omitted).

The court of appeals further held that petitioner was not constitutionally entitled to notice and a hearing before the entry of the interim blocking order because "postponement is acceptable in emergencies," Pet. App. 8a, and it further noted that any takings claim would be both "premature" and "in the wrong court," *id.* at 9a. Finally, the court rejected petitioner's challenges under the Ex Post Facto and Bill of Attainder Clauses. The court explained that "only criminal statutes are deemed ex post facto laws, and the IEEPA does not define a crime"; that "the IEEPA predates [petitioner's] activities, and * * * aid to the enemies of the United States has been unlawful since the Nation's founding"; and

that "implementation of the statute is in the hands of the Executive and Judicial Branches, while a bill of attainder is a decision of guilt made by the Legislative Branch." *Ibid.* (citation omitted).

d. In its concluding paragraph, the court of appeals stated:

> Because we have dealt exclusively with legal contentions, our resolution of them is conclusive and not subject to reexamination in the district court when deciding whether [petitioner] is entitled to a permanent injunction. But we have avoided any inquiry into the facts and do not attempt to anticipate the ultimate resolution of [petitioner's] claim. The central question now becomes whether the evidence supports the agency's belief that [petitioner] uses its assets to support terrorism. That question should be addressed and resolved expeditiously in the district court.

Pet. App. 9a. Judge Cudahy filed a concurring opinion, noting his "agreement with the majority both with respect to mootness and to the merits." *Ibid.*

ARGUMENT

The interlocutory decision of the court of appeals is correct and does not conflict with any decision of this Court or of any other court of appeals. Further review is not warranted.

1. This Court's usual practice is to "await final judgment in the lower courts before exercising [its] certiorari jurisdiction." *Virginia Military Inst.* v. *United States*, 508 U.S. 946, 946 (1993) (opinion of Scalia, J., respecting denial of certiorari). See, *e.g.*, *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916) (interlocutory character of a case "of itself alone

furnishe[s] sufficient ground for the denial" of review); *Brotherhood of Locomotive Firemen* v. *Bangor & Aroostook R.R.*, 389 U.S. 327, 328 (1967) ("because the Court of Appeals remanded the case, it is not yet ripe for review by this Court"). There is no reason for the Court to depart from that practice here.

To the contrary, review by this Court of the court of appeals' interlocutory ruling would be particularly inappropriate in this case. The ultimate question in petitioner's current appeal is whether the district court abused its discretion by denying petitioner's request for a preliminary injunction against enforcement of the interim blocking order. That interim order, however, has since been superseded by OFAC's final designation of petitioner as a Specially Designated Global Terrorist. A ruling by this Court upholding petitioner's prior challenge to the interim blocking order would not, in and of itself, afford petitioner any practical benefit at the present stage of the proceedings.

Although it recognized that the interim blocking order had been superseded by the final designation during the pendency of the appeal, the court of appeals concluded that petitioner's appeal was not moot, and that the court could appropriately resolve certain pure issues of law that are common to petitioner's challenges to both OFAC orders. Pet. App. 4a-5a. The court noted that its resolution of those legal questions was "conclusive" and would not be "subject to reexamination in the district court." *Id.* at 9a. That statement simply reflects the well-settled principle that the interlocutory decision of an appellate court is considered the law of the case and will not ordinarily be revisited in later proceedings before the same court or an inferior one. See, *e.g.*, *Messenger* v. *Anderson*, 225 U.S. 436, 444 (1912) (Holmes, J.) (law-of-the-case doctrine "merely

expresses the practice of courts generally to refuse to reopen what has been decided").

This Court, however, will not be bound by the interlocutory rulings of the court of appeals upon review of the district court's final judgment in this case. See, *e.g.*, *Pierce County* v. *Guillen*, 537 U.S. 129, 141 n.5 (2003) ("Even if the Washington Supreme Court adheres to its interlocutory ruling as 'law of the case,' we would still be able to review the discovery issue once a final judgment has been entered."); *Lujan* v. *National Wildlife Fed'n*, 497 U.S. 871, 881 n.1 (1990) ("earlier panel's ruling does not, of course, bind this Court"). Accordingly, even if the legal rulings of the court of appeals otherwise warranted this Court's review, that review would more appropriately be exercised after the entry of final judgment in this case. The practical impact of the court of appeals' rulings will be clearer at that time, and petitioner's challenge to its final designation as a Specially Designated Global Terrorist—the only OFAC determination that presently affects petitioner's ability to control its property—will be directly before this Court.

2. The court of appeals correctly rejected the contention (Pet. 20-25) that assets held by a domestically-chartered corporation are categorically excluded from IEEPA's coverage. See Pet. App. 5a-7a. This Court has recognized "the broad authority of the Executive when acting under" IEEPA. *Dames & Moore* v. *Regan*, 453 U.S. 654, 672 (1981); see *Regan* v. *Wald*, 468 U.S. 222, 232-233 n.16 (1984) (referring to the "sweeping statutory language" of the Trading with the Enemy Act (TWEA) and noting that IEEPA "tracks the language" of TWEA). IEEPA by its terms encompasses "*any* property in which any foreign country or a national thereof has *any* interest." 50 U.S.C. 1702(a)(1)(B) (emphasis added). OFAC regulations broadly define

the statutory term "interest" in property to mean "an interest of any nature whatsoever, direct or indirect." 31 C.F.R. 500.312.

As the court of appeals recognized, to construe the IEEPA term "interest" as limited to legal title would disserve the statute's purposes by impairing "the United States' ability to respond to an external threat." Pet. App. 6a. Rather, "the focus must be on how assets could be controlled and used, not on bare legal ownership." *Id.* at 7a. Although petitioner as a corporate entity is chartered within the United States, two of the three members of its board were foreign nationals at the time the interim blocking order was issued, see *id.* at 5a, and its "funds are applied for the benefit of non-citizens" living abroad, *id.* at 7a. Because petitioner's assets have been controlled by, and used for the benefit of, foreign nationals, they are encompassed by Section 1702(a)(1)(B).

Petitioner suggests that, even if Section 1702(a)(1)(B) extends beyond property to which foreign governments or nationals hold legal title, its scope is limited to "legally enforceable interests." Pet. 21 n.15 (emphasis omitted). Petitioner cites no authority for its proposed limitation on the scope of the covered "interests," and its proffered construction of the statutory term was recently rejected by the District of Columbia Circuit in a case presenting similar questions involving a U.S.-chartered foundation that operated as a fundraiser for Hamas in the United States. See *Holy Land Found.* v. *Ashcroft*, 333 F.3d 156, 162-163 (2003). In any event, because a majority of petitioner's board members at the time of the interim blocking order were foreign nationals, who possessed the legal right to control the disposition of the corporation's assets, the test proposed by petitioner would be satisfied here.

3. Petitioner's constitutional challenges to the interim blocking order lack merit.

a. Petitioner contends (Pet. 11-20) that the procedures employed under IEEPA are inconsistent with the Due Process Clause. That argument appears to include a challenge to the consideration by OFAC and the reviewing court of any classified information, as well as a broader complaint about OFAC's administrative procedures. Petitioner's due process arguments lack merit.

As the court of appeals recognized, IEEPA "authorizes the use of classified evidence" by the Secretary of the Treasury (and thus by OFAC as the Secretary's delegatee) in making blocking decisions, and it provides that classified information relied on by the Secretary "may be considered *ex parte* by the district court." Pet. App. 8a (citing 50 U.S.C. 1702(c)). Where, as here, classified or otherwise confidential information is directly relevant to the merits of an Executive or Judicial Branch decision, the Constitution does not categorically preclude such *in camera* inspection. See, *e.g.*, *EPA* v. *Mink*, 410 U.S. 73, 93 (1973) ("Plainly, in some situations, *in camera* inspection [of requested agency records] will be necessary and appropriate" to resolve suits under the Freedom of Information Act.); Pet. App. 8a (citing with approval court of appeals decisions upholding *ex parte* judicial consideration of classified information, and observing that "[t]he Constitution would indeed be a suicide pact if the only way to curtail enemies' access to assets were to reveal information that might cost lives") (citation omitted).[3] Petitioner's

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[3] Even apart from the government's compelling interest in fighting terrorism by cutting off the funding provided to international terrorists, there is an independent national security

reliance (see, *e.g.*, Pet. 15 & n.10, 18 n.12) on criminal cases is misplaced. Because neither the interim blocking order nor the final designation of petitioner as a Specially Designated Global Terrorist imposed any criminal sanction, the constitutional safeguards specific to criminal prosecutions are inapplicable here.

Petitioner's reliance (Pet. 12) on *Goldberg* v. *Kelly*, 397 U.S. 254, 263-271 (1970), is similarly unavailing. Neither *Goldberg* v. *Kelly* nor any other decision of this Court has construed the Due Process Clause to impose a categorical requirement that a hearing be afforded prior to any deprivation of property rights. As the court of appeals explained, "[a]lthough pre-seizure hearing is the constitutional norm, postponement is acceptable in emergencies. Risks of error rise when hearings are deferred, but these risks must be balanced against the potential for loss of life if assets should be put to violent use." Pet. App. 8a-9a (citations omitted). In light of the self-evident danger that IEEPA's purposes could be evaded if pre-seizure notice were provided, and the availability of meaningful post-seizure remedies, the Constitution did not require that petitioner be provided with notice and a hearing prior to the initial freezing of its property under the now-superseded interim blocking order. As the district court observed, moreover, petitioner "chose not to utilize many of the available administrative remedies," *id.* at 50c, even though "OFAC provided [petitioner] with a variety of post-blocking options" by which the

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interest in ensuring that classified information remains secure. Indeed, this Court has recognized that the government has a "'compelling interest' in withholding national security information from unauthorized persons in the course of executive business." *Department of the Navy* v. *Egan*, 484 U.S. 518, 527 (1988) (quoting *Snepp* v. *United States*, 444 U.S. 507, 509 n.3 (1980)).

organization might have sought to persuade OFAC to reconsider the interim blocking order, *id.* at 51c.

Petitioner also argues more generally (Pet. 11-13) that the court of appeals failed to analyze in sufficient detail the various factors bearing on its disposition of petitioner's due process claim. The district court discussed those factors at considerable length. See Pet. App. 47c-53c. The court of appeals was under no obligation to repeat that analysis, particularly in light of OFAC's issuance of the final designation during the pendency of the appeal. Moreover, the adequacy of the procedures concerning the interim blocking order, including the absence of pre-blocking notice and an opportunity for a pre-blocking hearing, is of no continuing importance to petitioner, and any challenge petitioner may have to the procedures used in connection with OFAC's final designation is not yet ripe for appellate review. In keeping with its overall approach to the case, the court of appeals therefore addressed only those aspects of petitioner's due process claims—*e.g.*, petitioner's broad legal challenge to the consideration under IEEPA of classified information under any circumstances, and its argument that pre-blocking notice and opportunity for a hearing are always required—that are common to both the interim and final orders. Nothing more was required.

b. Petitioner's Ex Post Facto Clause challenge to the interim blocking order (Pet. 26-28) also lacks merit. That order did not impose any criminal sanction, and it served an obvious and important non-punitive purpose: to ensure that petitioner's funds were not used to support terrorist activities pending OFAC's final determination whether to designate petitioner as a Specially Designated Global Terrorist. And even if the interim blocking order were found to have a punitive purpose

or effect, it would not impose *retroactive* punishment, because IEEPA predated petitioner's activities. Pet. App. 9a.

c. The court of appeals correctly held that "[a]pplication of the IEEPA is not a bill of attainder; implementation of the statute is in the hands of the Executive and Judicial Branches, while a bill of attainder is a decision of guilt made by the Legislative Branch." Pet. App. 9a. IEEPA itself does not specifically mention petitioner or single it out for unfavorable treatment. So long as OFAC's issuance of the interim blocking order was an otherwise appropriate means of administering the statute, the Bill of Attainder Clause imposes no further constraints on the regulatory actions of Executive Branch agencies, which routinely make decisions concerning specific individuals. See, *e.g.*, *Walmer* v. *United States Dep't of Def.*, 52 F.3d 851, 855 (10th Cir.) ("bulk of authority suggests" that Bill of Attainder Clause should be so understood), cert. denied, 516 U.S. 974 (1995); *Korte* v. *OPM*, 797 F.2d 967, 972 (Fed. Cir. 1986) ("The clause is a limitation on the authority of the legislative branch * * * [not] the executive branch.").

4. The court of appeals' decision does not conflict with any decision of this Court or of another court of appeals. Petitioner identifies no decision that has either adopted its proposed construction of the IEEPA term "interest" or sustained a constitutional challenge to the procedures employed by OFAC in administering the statute. Indeed, in the only other appellate decision concerning a similar designation and blocking of a domestic entity pursuant to IEEPA and Executive Order No. 13,224, the District of Columbia Circuit expressly agreed with the Seventh Circuit's analysis of the relevant statutory-construction question, and similarly rejected due process and other constitutional

challenges to the designation. See *Holy Land Found.*, 333 F.3d at 162-164.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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OCTOBER 2003

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No. 03 -46

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OFFICE OF THE CLERK

IN THE

Supreme Court of The United States

GLOBAL RELIEF FOUNDATION, INC.,

Petitioner,

v.

JOHN W. SNOW, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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REPLY BRIEF FOR THE PETITIONER

From page 1 to 18, the Brief for the Respondent in Opposition ("Opposition") is replete with errors. Indeed the very question presented by respondents is fundamentally flawed. Compare Opp'n at I (arguing that the legal standard governing this appeal is abuse of discretion) with Duct-O-Wire Co. v. U.S. Crane, Inc., 31 F.3d 506, 508-09 (7th Cir. 1994) (holding that errors of law made during preliminary injunction proceeding, like those identified by GRF in its three questions presented, are reviewed de novo by appellate courts). Based upon this error, as well as the other errors identified below, this Court should discount respondents' Opposition and grant the Petition for writ of certiorari.

A. Immediate Review is Crucial to be Meaningful.

Contrary to respondents' argument otherwise,[1] this Court should not wait for the trial court to render a final decision before reviewing the merits of GRF's case. This Court has often reviewed interlocutory orders and opinions in order to correct injustices similar to that perpetrated by Respondents on GRF. See e.g., Will v. United States, 389 U.S. 90, 94-98 (1967) (granting certiorari despite absence of finality in district court where the implications of the appellate interlocutory decision affected the orderly administration of justice); Youngstown Sheet & Tube Co v. Sawyer, 343 U.S. 579, 585, 587 (1952) (establishing that inquiry was ripe on the constitutionality of Presidential Executive Order even though case had proceeded no further than the preliminary injunction stage); Larson v. Domestic & Foreign Commerce Corporation, 337 U.S. 682, 685 n.3 (1949) (reviewing appellate decision which granted injunctive relief because the issue was "fundamental to the further conduct of the case"); Land v. Dollar, 330 U.S. 731, 734 n.2 (1947) (same); Aetna Casualty & Surety Co. v. Flowers, 330 U.S. 464, 467 (1947) (affirming authority to review an action of an appellate court which had remanded to a district court); United States v. General Motors Corporation, 323 U.S. 373, 377 (1945) (reviewing power of sovereign to use private property because correctness of decision as to exercise of that power depended upon review of its constitutional validity and limitations).

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[1] See Opp'n at 10 (arguing that "[t]his Court's usual practice is to await final judgment in the lower courts before exercising its certiorari jurisdiction") (citing Virginia Military Inst. v. United States, 508 U.S. 946, 946 (1993))

Quite simply, when "the effect of the order is immediate and irreparable . . . review by this Court of the propriety of the order must be immediate to be meaningful." Federal Power Commission v. Transcontinental Gas Pipe Line Corp., 423 U.S. 326, 332 (1976) (authorizing review of a challenged interlocutory order).

Here, GRF will suffer an immediate and irreparable injury if this Court does not review the Seventh Circuit's decision before the case is remanded to the trial court. On remand, GRF would be required to prepare for and defend sweeping charges of wrongdoing dating back well over a decade without knowing the specifics of the charges; and justify every single charitable contribution it ever made with the hopes that some of its evidence would respond to the redacted portions of the record relied upon by Respondents. GRF would be subjected to enormous expense and legal fees if it were required to blindly respond to the government's unconstitutional secret evidence[2] after this case was remanded for trial. This burden is particularly acute considering that GRF has been deprived of almost all means to pay for its defense of any trial. Accordingly, before GRF is subjected to the hardship of a trial, it would be particularly appropriate for this Court to determine the constitutionality of the procedures which will be utilized to affirm OFAC's death sentence. Larson, 337 U.S. at 685 n.3 (writ of certiorari granted in order to review injunctive issue when the issue was "fundamental to the further conduct of the case").

Additionally, this Court would promote judicial economy by reviewing this case now since immediate review diminishes the prospect that this case be tried twice and appealed three times.[3] Specifically, if

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[2]Respondentss purported to "classify" their administrative record pursuant to the recently enacted provisions of the USA PATRIOT Act, § 106(2), 115 Stat. 278, which amended IEEPA, 50 U.S.C. §1702(c). See Pet. App. 58c and Opp'n at 6.

[3]Of course, the Court would obviate any need for further trials or appeals if it holds that prosecution under Executive Order 13224 ("E.O. 13224") is impermissible based upon an application of the Ex Post Facto or Bill of Attainder clauses.

this Court refuses to review this matter now and GRF loses at trial in the district court, GRF would most certainly appeal not only the factual findings underlying the SDGT designation, but also the inadequacy of the procedural protections afforded GRF. If, in this second appeal, GRF then prevailed on its argument that the record developed at trial was incomplete because the district court and Seventh Circuit's procedures (e.g. the use of secret evidence) were unconstitutional, this Court would be required to remand for a second trial at which GRF would be allowed to fully develop the record by responding to what is now the government's secret evidence. Whichever party lost this second trial would most certainly note a third appeal! On the other hand, if this Court delineates the appropriate procedural protections that should be afforded GRF on remand and outlines the substantive law underlying the government's actions, on remand, the trial court would be in a much better position to develop a complete record, which would in turn allow any subsequent appellate court to render a final decision on that record if either party took a second appeal. Thus, this Court would efficiently foster the development of the record by setting the legal parameters of this case on this appeal. Since GRF's legal challenge to the government's procedures has been fully briefed and the Court can rule on the constitutionality of those procedures with the current record, see infra, the parties and the courts would practically benefit from immediate Supreme Court review.

Moreover, GRF has framed the issues in this case such that further development of the record below is immaterial to this appeal. For example, GRF has focused its primary arguments in this appeal around legal issues which do not have significant factual underpinnings. Pet. App. at 9a. (respondents admitting that the Seventh Circuit "avoided any inquiry into the facts and d[id] not attempt to anticipate the ultimate resolution of GRF's claim"). Additionally, the Seventh Circuit even described its decision to uphold the use of secret evidence as "conclusive and not subject to reexamination in the district court. . . ." Pet. App. at 9a. Since the legal contentions addressed by the Seventh Circuit and presented here for review are final and do not require any further factual development, id., it would be pointless for this Court to await any factual findings entered by the trial court after remand. GM Corp., 323 U.S. at 377 (granting certiorari to review appellate decision, even though appellate court remanded for further proceedings, in order to set guidelines as to the constitutional limitations on government's power to

take private property).

Respondents also suggest that GRF's due process challenge to the permanent SDGT designation (as opposed to GRF's due process challenge to the interim blocking "pending investigation") is not ripe for review.[4] See Opp'n at 16 ("any challenge petitioner may have to the procedures used in connection with OFAC's final designation is not yet ripe for appellate review"). Respondents have apparently revived (by implication) the arguments they made in their Suggestion of Mootness to the Seventh Circuit. See Pet. app. 3a. However, this argument was soundly rejected by the Seventh Circuit which held that GRF asked both the District Court and the Seventh Circuit not only to lift the interim blocking pending investigation but "to stave off" the permanent SDGT designation procedures. See id. 3a-4a (holding that GRF asked the trial court "to block the [SDGT] designation" and "reiterated" those arguments "in the appellate briefs"). "Dismissing this appeal, and directing GRF to start from scratch in the district court with a challenge to the [SDGT] designation of October 18, then would compound [GRF's] injury by extending the length of an illegal administrative action". Pet. App. 4a.

B. Respondents' Construction of IEEPA is Unworkable.

Respondents have also failed to rebut any of GRF's arguments regarding the proper construction of IEEPA. Compare Pet. at 20 to 25 with Opp'n at 12 to 13. For example, respondents's Opposition is built upon a mischaracterization of GRF's arguments. See Opp'n at 8 and 12. Quite simply, GRF has never argued that "domestically chartered corporations are categorically excluded from IEEPA's coverage." Pet. at 20-25 (arguing that OFAC's jurisdiction to block property depended only on whether a foreign person had an identifiable interest in the claim and not whether the foreign person might benefit from that claim).

Respondents also argue that IEEPA blocking determinations

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[4]Contrary to defendants' repeated efforts to characterize GRF's appeal otherwise, see Opp'n at 7, 111, GRF did not limit its appeal to a challenging the enforcement of the interim blocking pending investigation but also sought to enjoin the permanent SDGT designation.

should focus on how "assets could be controlled and used, not on bare legal ownership." Opp'n at 13. For example, Respondents reason that GRF is subject to blocking since at least some of its charitable assistance has been given to and "used" by foreign nationals. Id. at 13 (arguing that IEEPA is applicable to all of GRF's assets since "its funds are applied for the benefit of non-citizens living abroad"). However, respondents' construction is grossly overbroad because it authorizes OFAC to completely freeze a U.S. citizen based upon its speculation regarding how a person "could" potentially use its property. If the government could prove that a foreign national had a property interest in a U.S. citizen's property by simply speculating about how a foreign person might ultimately use or benefit from that U.S. citizen's property, the government's power to block such property would be as broad as its ability to imagine possible connections. Such a result is untenable.[5]

Furthermore, respondents improperly support their blocking with the fact that GRF had at one time two corporate directors who were foreign nationals. Although it is true that 50 U.S.C. § 1702 authorizes the President to block the assets of foreign nationals, § 1702 is tempered by § 1701 which only authorizes the President to block the assets of foreign nationals who have some connection to a "national emergency." To date, there has been no finding that anybody with an interest in GRF has connections to a national emergency. Since such a finding is a prerequisite to the blocking, the Seventh Circuit improperly affirmed respondents' blocking to the extent it was premised on the fact that GRF had foreign national directors.

In any event, respondents cannot block all of GRF's assets even if foreign nationals have an interest in GRF's property. Instead, respondents can only block those property interests in which the foreign nationals have an interest. For example, as explained in GRF's Petition, if a foreign national is a stockholder in a corporation, the President conceivably can block the stockholders' shares (if all the other elements of IEEPA are satisfied) but not the entire company. Otherwise, the President could shut down General Motors if it found a single member of al Qaeda who owned stock in that company.

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[5]Respondents argue that GRF has cited no authority for its definition of property interest. Opp'n at 13. This is not the case. Pet. at 20-24 (relying upon Dames & Moore).

Moreover, respondents suggest that their blocking of GRF is not Ex Post Facto because on its face, IEEPA predates GRF's activities. Opp'n at 9. However, GRF has never argued that IEEPA is Ex Post Facto on its face, but as applied to GRF. In other words, although IEEPA may predate GRF's activities, neither Executive Order 13224 nor the amendments to the USA PATRIOT ACT, predate any of the allegedly wrongful acts supporting the SDGT designation. Thus E.O. 13224 as applied to GRF violates the Ex Post Facto clause because GRF is being sanctioned for its association with people who were designated under this executive order after GRF allegedly had its contacts with those who have since been designated.[6]

Respondents also argue that their blocking of GRF is not Ex Post Facto since it has always been illegal to give comfort to the enemy. Opp'n at 9, 17. Although this may be true, such an offense is commonly known and punishable as treason. Those charged with such an offense are entitled to a trial by jury based upon the testimony of at least two witnesses. Since respondents have effectively convicted GRF of treason, without complying with the Constitution's procedural safeguards, their SDGT designation is clearly unconstitutional. Cramer v. U.S., 325 U.S. 1, 44 (1945) ("We do not intimate that Congress could dispense with the two-witness rule merely by giving the same offense another name").

C. **OFAC's Procedures Violate Due Process.**

Respondents, like the Seventh Circuit, have also failed to identify any governmental interests which justify the use of secret evidence in this case. Compare Opp'n at 14 to 15 (citing Department of Navy v. Egan, 484 U.S. 518, 527 (1988); EPA v. Mink, 410 U.S. 73 (1973) with Pet. at 16 to 20. For example, respondents cite to Mink which authorizes the use of secret evidence when determining whether to grant or deny a Freedom of Information Act request. However, Mink

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[6]Clearly, executive orders instituted under IEEPA are legislative acts. Indeed, IEEPA is a designation of legislative power from Congress to the President. For this reason, E.O. 13224 is clearly a legislative act subject to the Ex Post Facto clause and the Bill of Attainder Clause regardless of respondents' argument otherwise. But see Opp'n at. By expounding rules of generally applicability, E.O. 13224 clearly created legislative prohibitions.

is distinguishable from the instant matter since a FOIA applicant does not have a property or liberty interest to see the government's documents. Pet. at 16-17. Thus, a FOIA applicant can be deprived of almost all property and/or liberty, with little, if any, due process protections. Id. IEEPA designees like GRF on the other hand are subjected to substantial deprivations of property and liberty and must be afforded the full panoply of due process rights including the right to see (as well as confront) the evidence against them. Id.

Defendants' reliance on Egan is similarly misplaced. In that case this Court merely recognized that the grant or denial of a security clearance to a particular employee is a sensitive and inherently discretionary judgment call that is committed by law to the Executive Branch. Department of Navy v. Egan, 484 U.S. 518, 527 (1988) (holding that nobody has a right to a security clearance). In other words a government employee, like a FOIA applicant, does not have a significant property interest protected by the Constitution. Accordingly, as in Mink, the government has a relatively low threshold to meet under the Eldridge test when determining what evidence to disclose during the security clearance application process because the employee's limited right to see any classified evidence is substantially outweighed by the government's national security interests. This analysis does not hold true in the IEEPA arena because IEEPA designees have tremendous countervailing interests which need protection. See geneally Pet.

If there was any question that the use of ex parte and in camera proceedings is important to the public, it was put to rest by the number of articles written on the subject. As of the date of this brief, 1,308 news articles have been written about GRF, an excess of 3,000 have been written about the PATRIOT Act, 1,032 have been written about IEEPA and in excess of 3,000 articles have been written about blocking assets of Muslims. Additionally, Congressman John Conyers, Jr., Ranking member of the House Judiciary Committee criticized respondents' use of secret evidence, stating:

> The Bush Administration's decision to use secret evidence against the Global Relief Foundation is a slap in the face of civil liberties proponents and the thousands who supported him because of his campaign pledge to end this unconstitutional practice.

> Clearly, the President has reneged on his pledge by seizing millions of dollars from U.S.-based Muslim charities without disclosing evidence to support their allegations.
>
> I call on the President to abide by his campaign promise and to cease the practice of gutting the very freedoms we are attempting to protect.

See Press Release, March 18, 2002, Conyers: Bush Lied on Secret Evidence.

Respondent John Ashcroft has been traveling the country trying to manufacture support for the USA PATRIOT Act and a companion bill that would go further, the Domestic Security Enhancement Act of 2003, ("Patriot Act II"), which would further broaden the Executive's power. Additionally, Senator Orrin Hatch's bill grants indefinite power to the Justice Department to further detect and prosecute terrorists; it does not even attempt to define the parameters of this power or what actions will be taken against offenders. This legislation would give the Executive Branch a "unchecked authority" to prosecute anyone it deems a terrorist. It is time for sober review of the PATRIOT Act and the Executive's anti-terrorism effort's that diminish due process safeguards. This Court is charged with maintaining the delicate balance between individual liberty and state security. "Even the war power does not remove constitutional limitations safeguarding essential liberties." See United States v. Robel, 389 U.S. 258, 264 (1967).

This Court should grant certiorari because of the importance of the question pertaining to the proper administration of IEEPA as amended by the PATRIOT Act. See Schilling v. Rogers, 363 U.S. 666, 670 (1960) (granting certiorari to review the proper administration of the Trading with the Enemy Act); American Federation of Musicians v. Wittstein, 379 U.S. 171, 175 (1964) (granting certiorari to an important question of "first impression"); Glus v. Brooklyn Eastern District Terminal, 359 U.S. 231, 232 (1959) (granting certiorari to an important and recurring question). Furthermore, because of the numerous cases now pending and soon to be brought before the lower courts on the very questions presented here for review, this Court should review the issues immediately.; See also Massachusetts Trustees of Eastern Gas and Fuel Assoc. v. United States, 377 U.S. 235, 237 (1964) (granting certiorari

because a considerable number of suits are pending in the lower courts which will turn on resolution of the issues presented for review); United States v. Union Pacific Railroad Co., 353 U.S. 112, 112 (1957) (granting certiorari in view of the public importance the question presented).

"He that would make his own liberty secure must guard even his enemy from oppression; for if he violates this duty he establishes a precedent that will reach himself." Cramer, 325 U.S. at 48 (quotation omitted).

CONCLUSION

THEREFORE, Petitioner GLOBAL RELIEF FOUNDATION, INC., requests that this Court GRANT its Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

Dated: October 16, 2003

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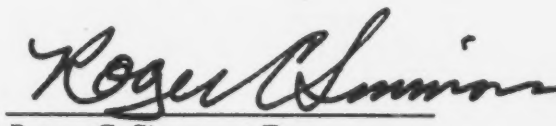
SUPREME COURT OF THE UNITED STATES
RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Pursuant to U.S. Supreme Court Rule 29.6, Global Relief Foundation, Inc., by and through its undersigned attorneys, Gordon & Simmons, LLP, hereby certify that: Global Relief Foundation, Inc. is a domestic, non-profit corporation chartered and headquartered in Illinois having no parent or publicly held company that owns 10% or more of the corporation's stock.



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